UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
		Docket #21mc0007
THE FEDERAL REPUBLIC OF NIGERIA,	:	1:21-mc-00007-JGK-VF
Plaintiff,	:	
- against -	:	
VR ADVISORY SERVICES, LTD, et al.,	:	New York, New York November 1, 2022
Defendants.	:	
----------	:	TELEPHONE CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE VALERIE FIGUEREDO,
UNITED STATES MAGISTRATE JUDGE

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E X A M I N A T I O N S

Witness	Direct	Cross	Re-Direct	Re-Cross
None				

E X H I B I T S

Exhibit Number	Description	ID	In	Voir Dire
None				

THE CLERK: This is the matter of the Federal Republic of Nigeria versus VR Advisory Services, et al., docket number 21mc07. The Honorable Valerie Figueredo presiding.

Counsel, please note your appearance for the record starting with plaintiff's counsel.

MR. CHRISTOPHER MAJOR: Good afternoon, Your Honor, Chris Major, Meister Seelig & Fein, we represent the applicant, the Federal Republic of Nigeria.

MR. AUSTIN KIM: Good afternoon, Your Honor, Austin Kim, also form Meister Seelig & Fein for the applicant, the Federal Republic of Nigeria.

MR. JEFFREY CHIVERS: Good afternoon, Your Honor, Jeff Chivers for the VR respondents.

MR. THEODORE ROSTOW: Good afternoon, Your Honor, Theodore Rostow also with VR respondents.

HONORABLE VALERIE FIGUEREDO (THE COURT): Good afternoon, everyone, this is Judge Figueredo. Thank you for being on here on a relatively I think short notice, but I wanted to address the discovery disputes raised by plaintiffs here, the Federal Republic of Nigeria, in ECF number 53, the October 18, 2022, letter.

Mr. Major, since this is your request, if you want to start off?

MR. MAJOR: Yes, please, Your Honor, Chris Major on behalf of the applicant, Nigeria. So we raised in our letter, Your Honor, three issues and I'll take them in order if that's okay with the Court. So the first issue deals with the scope of disclosure and there are, there are three sub issues within that scope of disclosure dispute.

The first thing deals with the valuations and purchase price that was paid by the VR respondents when they made the investment in Process and Industrial Development which the only asset, and we've asserted this for years now in 1782s here in the United States and it's not been disputed, that the only assets P&ID has is the award. Therefore, the VR respondents essentially required 25 percent of this award which is now valued in excess of $10 billion.

We think that the purchase price that was paid and any valuations that were performed either by the seller or the purchaser, the VR respondents, are relevant to the various parties who were involved in the procurement of award, the procurement of the underlying contract, the facts and circumstances of

the arbitrations, the purchase price may well provide information about their knowledge about the fraudulent nature of the award.

For example, if the VR respondents acquired a 25 percent interest in an award that was worth on its face amount $6.6 billion, and with, you know, rapidly accruing interest, then that's now brought it over $10 billion, if they, for example, paid $100 million for that large interest in a massive award, that would be indicative of the fact that people involved in the transaction, including the selling parties who were the P&ID principals, that they had knowledge that the award was invalid and procured through fraud and that, therefore, would have a low probability of ultimate collection.

It also is highly relevant to the fact that there are parties in our view who stand to gain massive profit here if they're successful in enforcing the award, including the VR respondents, but also the selling individuals who sold their interest in the award to the VR respondents. And those ill-gotten gains are relevant to the civil litigation that is between the parties in England and for that reason we think that the information regarding valuations and

the actual purchase price are relevant.

There is a, you know, we can protect the information through the use of a protective order, you know, to the extent it's claimed that it's proprietary business information, but we think it's clearly relevant and, therefore, subject to production in this Section 1782.

The second disputed scope of disclosure issue relates to --

THE COURT: I'm sorry to cut you off, Mr. Major, but just I think it might be easier to just address, like close the loop on this, this particular, the valuation and purchase price issue, and then move on to the second category.

MR. MAJOR: Of course.

THE COURT: Just because it's easier to keep track. Mr. Chivers or Mr. Rostow, do you have a response on that?

MR. CHIVERS: Thank you, Your Honor, Jeff Chivers for the VR respondents. This argument about the valuation or purchase price paid by the VR respondents is something that Nigeria raises before Judge Engelmayer and he was unpersuaded by the argument rightly so. It is extremely difficult to

enforce and arbitration award against a sovereign that does not want to pay which always leads to a discount on any investment in them. And moreover, Your Honor, the still living co-founder of Process and Industrial Development, Brendan Cahill, is a witness and custodian in the English proceedings. Nigeria knows that Brendan Cahill was a party to the transaction related to the investment because the VR respondents in this case, and I'm sorry, the Schofield action, produced a version of the shareholder deed which was the instrument used for the investment. So Nigeria knows that Brendan Cahill was a party to that document and if Nigeria truly believes this information is relevant to the English proceeding, Nigeria would bring the issue before the English Court as the Second Circuit suggested in *In Re: Malev Hungarian Airlines* which we cited at footnote 3 in our letter and there's a case by this Court more recent in 2021, *In Re: Porsche Automobil Holding SE*, and that's 2021 U.S. Dist. LEXIS 115099 at 28 to 23, it's a 2021 decision. And there the Court declined to order contested Section 1782 discovery where the discovery in the foreign proceeding itself.

We don't think this is a close call, we think

Judge Engelmayer was absolutely right when he said that the valuation is not a signifier of known criminality and to the extent the Court believes this is a close call, the fact that Nigeria can seek the same discovery from Brendan Cahill in the English proceeding with the judges or judge that is presiding over the English proceeding and will be making relevant determinations there, that should be a deciding factor against ordering disclosure, as it was in the *In Re: Porsche* case.

THE COURT: Can I just ask you a question, Mr. Chivers, the, you had said that, you had made a point about arbitration awards are difficult to enforce against a sovereign when they don't want to pay. Was that, when VR respondents was purchasing the 25 percent share in the award, was that something that was already apparent that he Federal Republic of Nigeria was contesting paying the award?

MR. CHIVERS: It was easily discernible, Your Honor, because there had been numerous conversations before then about payment of much smaller amounts, frankly, and Nigeria knows this. There were numerous discussions related to that and Nigeria has in the past, I don't have the docket number in front of me

but Nigeria has in the past resisted enforcement of arbitration awards. And, in general, in foreign sovereign debt markets, enforcement of arbitration awards is notoriously difficult because the assets typically to collect are within the sovereign itself. So this kind of undertaking is an enormous multimillion dollar undertaking regardless of whether the award, itself, is tainted by fraud. And there is no evidence that when the VR respondents invested there was any indication that the award was tainted by fraud, the VR respondents viewed it as an award that had been entered in London and needed to be enforced pursuant to the New York convention in jurisdictions where Nigeria had assets. And, yes, it is exceedingly difficult to obtain this kind of judgment.

THE COURT: Okay, Mr. Major, do you have a response to the point that you could obtain this discovery from Mr. Cahill in the English proceeding?

MR. MAJOR: Yes, Your Honor. Regarding that, Mr. Cahill is not a party to the English proceeding, the party to the English proceedings is Process and Industrial Development and Nigeria, Mr. Cahill is not a party. There's not showing before the Court that this discovery that we're requesting could be obtained

in the English proceeding. Even if it could, that would not be a bar under Section 1782. I think most importantly though, Your Honor, we're seeking documents in the VR respondent's possession including their internal valuations that they presumably performed. It's one thing to say that an award like this is difficult to enforce and, yes, maybe it will cost at the end of the day tens of millions of dollars to attempt to enforce it, but we're talking about an award that is in excess of $10 billion and the difficulty in enforcement may very well be something that a shrewd investor like the VR respondents take into account. But if the valuation and the price paid is, you know, a very small fraction of the overall amount, that would be indicative of knowledge regarding the fraud and the invalidity of the award.

Regardless, the argument about, you know, whatever the Court thinks of the merit of that factual argument about whether the purchase price would be indicative of knowledge of the fraud, that's an argument that will be presumably made in England. What we're, the only thing we're seeking at this stage is discover the facts and then it will be up to the now king's counsel who will be arguing in the English

trial how to deploy those facts. You know, so the job we have here is to obtain the facts and I think that it's relevant, it's easy to produce, it can be protected by a protective order and it's valid discovery that is relevant to the claims that will be litigated in England. And, of course, P&ID will make whatever arguments it wants to make over there and our client will make its arguments and then the English Court will decide. But right now we're just seeking the discovery of easily obtainable documents that are clearly producible under the Federal Rules which apply here.

THE COURT: So I guess I'm just, I'm wondering, you say that this is clearly relevant and I guess that's where I'm not entirely following your argument. Is there, if they -- if there is no evidence at the time that VR, that the VR respondents invested in the, in a 25 percent stake that the award was tainted by fraud, then why is it not just equally plausible that any discount, if there was a discount in the price, could have been attributable to various other factors not (indiscernible) fraud?

MR. MAJOR: Yes, Your Honor, so the only thing we have when, you know, counsel says that there was no

evidence of fraud and that his clients did not have evidence of fraud at the time they purchased the award, the only thing we have is that representation from counsel. Without the documents we're not able to test that and discover these facts. I don't think that, you know, the representation from counsel about his client's knowledge should be sufficient for cutting off discovery. You know, if we get these documents it may well show, maybe they paid 75 cents on the doll and, you know, everyone would conclude that they paid full value given the difficulty of enforcement. But maybe they paid 5 cents on the dollar and the two fraudsters who engineered this thing from the beginning knew that they had a fraudulent award and sold it for a song, so to speak, because they knew that it wasn't worth much. And that fact could be highly relevant in the English trial and that's why we're seeking to discover it, not just through a representation from counsel, but from actually getting the source documents.

THE COURT: Is this something Judge Engelmayer already considered, was this type of discovery into the valuation that VR respondents conducted before Judge Engelmayer?

MR. MAJOR: Your Honor, regarding Judge Engelmayer's comments during the April hearing, he was presiding over the 1782 that relates to the Nigerian criminal proceeding. He did react that he didn't think it was evidence of a crime if there was a discount paid, but that's not the issue that's before this Court now which is whether or not it's potentially relevant to the issues that will be tried in England. And one of the biggest issues that's going to be tried in England is whether the award was fraudulently procured and, you know, whether the folks who procured the award, you know, knew that it was fraudulent, could be proven by a lot of facts, one of which could be the amount that they sold it for.

So we maintain that Judge Engelmayer did not consider the issue that's before this Court and, in any event, Judge Engelmayer did not issue an order barring even in that case us from obtaining this information, he was just reacting on the record during a hearing. But there was no, we weren't foreclosed from pursuing it, but in any event, and I think more importantly, the issues here in this Court are different than what Judge Engelmayer was considering. As counsel said in his argument today, that was, it

was referring to whether there was criminality in the, of the transfer of the interest in the award but that's not what we're arguing here, it's really that it's relevant to the knowledge of the fraud. And then also, you know, most importantly for a civil case, which is what the English trial is, that it's demonstrative of the ill-gotten gains that the fraudsters are pursuing.

THE COURT: Mr. Chivers, I think you were going to say something?

MR. CHIVERS: Thank you, Your Honor. First, with respect to our position being based only on representation of counsel, that's not right. In the Schofield, the now Schofield proceeding, we've produced documents from our due diligence file and we have begun and will continue to produce documents from the VR respondent's due diligence file. It's not just a representation of counsel, we've, we are producing documents from our due diligence file and Nigeria has obtained broad discovery in multiple forums. They've gotten discovery from us, from the VR respondents in this and the Schofield case, wire transfer records from banks, documents and information from numerous cooperating and detained witnesses in Nigeria, and

there is no indication that the VR respondents had knowledge of any possibility that the award was tainted by fraud. It's not just a representation of counsel, we also have been complying with discovery and there is no indication that there was any such knowledge.

As to Brendan Cahill --

THE COURT: Sorry --

MR. CHIVERS: Sorry, Your Honor.

THE COURT: No, no, it's all good. When you were saying you were producing documents in your due diligence files and those, that you would say supports your statement that there is no indication of fraud. But just to get an example, when you say due diligence files, what are we talking about?

MR. CHIVERS: So the VR respondents maintained a file related to the investment in P&ID, they have referred to it as the diligence file in the sense that they performed diligence on the investment before making the investment. And that file has been the subject of discovery in the Schofield action and this one. In the Schofield action the VR respondents have produced the non-privileged documents from that file. So to the extent there were any evidence of fraud,

that would have been produced from the due diligence file.

THE COURT: So, Mr. Major, why is the due diligence file not the information you need to show knowledge of the fraud.

MR. MAJOR: Your Honor, the diligence file is a file that the VR respondents selected to search, we have not in this proceeding started to receive the emails from the various individual custodians. What's been produced so far is from the share file and we received I think a little over 500 documents so far which is obviously nothing given a transaction of this size. And the documents that were produced in the matter that's now before Judge Schofield were just from two custodians during the time period that was selected by the VR respondents without our consultation and that were selected, and the custodians and search terms also were selected without consultation for what we maintain was an engineered search.

So and the transaction records that we received so far, they're fully redacted and we have not received any wire transfer documentation from the VR respondents. We did receive it in a prior Section

1782 from third party banks which included bribe payments which were instrumental in the English proceedings and we'd like to get the transaction records here for the same reason. It may well be, turn out to be instrumental in the English trial, this is an enormous case with enormous ramification for the country of Nigeria and we want to make sure that we pursue the discovery in the US that's readily available from the VR respondents. If the VR respondents, they're in this business, Mr. Chivers has said, you know, it's a hard thing to collect on these, they knew what they were in for when they purchased their interest in this fraudulent award and I don't see any reason why we shouldn't be entitled to receive the documents so that we can consider to what extent they will help the client prove the case. I don't see how somebody could be trying to enforce an award, be the respondent in an English set aside trial regarding that award, but will not disclose anything about its purchase of the award. It's clearly relevant, they purchased an award that is being contested in England and I think that purchase is highly relevant to the validity of the award.

MR. CHIVERS: Your Honor, Jeff Chivers for the

VR respondents, just a couple of things with respect to Mr. Major's statements that there was wire transactions showing bribe payments. Those wire transactions, which we would not concede show bribe payments, they are not wire transactions of the VR respondents, just to be clear. I think Mr. Major would acknowledge that the wire transfers he just referred to are not wire transfers of the VR respondents, they were other individuals and they were from time periods, again, before the VR respondents made their investment.

And with respect to Brendan Cahill not being a party to the English proceedings, I'm looking at the list of individuals from whom documents were collected and Brendan Cahill is on it. He is a custodian in the English proceeding and this really goes to the Second Circuit's decision that we cited footnote 3 in the *In Re: Porsche* decision where, you know, Nigeria is saying in this proceeding give us the documents now even though they are of doubtful relevance and they are trade secrets and then we will use them in the English proceeding when Nigeria still could have, could have and could still go to the English Court and say these documents are relevant, they should be

within the scope of discovery, the English Court could give a ruling on that and get it from Cahill and if he won't give them up in the English proceeding then Nigeria could come here and say the English Court deems these relevant and they should be produced. That's exactly what the Second Circuit described as the right procedure in a close, if this is a close call, which we don't think it is, I think that's the right procedure to handle it.

MR. MAJOR: Your Honor, if I could just react to the trade secrets point. How could the VR respondents possibly take the position that the documents are trade secrets and yet tell us to go get them from Brendan Cahill, they're not trade secrets. And the *Porsche* case and the Second Circuit case, those are not cases where parties were seeking documents from, in those cases they were seeking documents directly from someone who was subject to the jurisdiction of the Court overseas. Here, you know, we're seeking documents from the VR respondents who are undisputedly found in this district. We want VR respondents' documents, not Brendan Cahill's documents. And they don't deny that they're in possession of these records, they make no argument

that it would be too difficult to produce, they're just trying to keep it secret, and that's improper, we're entitled to the discovery and there are protections that could be put in place to the extent they claim it's proprietary information, but I don't see how they could possibly claim to the Court that they're trade secrets when they're also telling the Court that I can be obtained from an adverse party like Brendan Cahill who they've initiated an arbitration against. Which is another point we'll come to but I just wanted to react to that trade secret part.

THE COURT: So, Mr. Cahill is the founder of P&ID, correct?

MR. MAJOR: Yes.

THE COURT: So if what you're seeking is the purchase price at which VR respondents bought the 25 percent interest, would his, would Cahill's documents not show that?

MR. MAJOR: I don't know what Mr. Cahill has in terms of documents regarding the purchase price. But it's not just the ultimate purchase price which the VR respondents have not -- obviously have and have not yet produced to us, but it's also internal

valuations and the information that was considered by the VR respondents when they determined what price they would pay for the award.

THE COURT: But the information they considered in determining what price to pay, I guess this circles back to my question of why this wouldn't come out of whatever they're going to produce to you from the due diligence files?

MR. MAJOR: Well we think it should be what they produce to us, whether it comes from the due diligence files of the custodian emails. They advised us during our extensive meet and confers that when they're reviewing documents, if there are documents relating to the valuation of the award, the determination of the purchase price, they've told us that they are withholding those documents. So they should be produced as part of that process but the reason we're here is they told us unequivocally they are not going to produce those documents when they come across them.

MR. CHIVERS: Your Honor, Jeff Chivers, may I make a clarification with respect to the last thing Mr. Majors said which is that we are withholding documents related to valuation, that's not quite

right. What we have said is we're not going to produce documents that relate purely to the valuation and have no, have no relation to procurement of the GSPA or procurement of the arbitration. We have committed to producing and we have been producing documents that are related to the procurement of the GSPA and the procurement of the award and I think 10 other subjects that Nigeria has asked for. What we've said is if a document relates exclusively to a valuation and it has no information related to those other subjects that arguably and some of them, you know, they are relevant, then we won't produce that. It's not that we're withholding everything that relates to a valuation.

THE COURT: Okay, do we want to move on to the second point?

MR. MAJOR: Yes, Your Honor, the second point relates to, and I've previewed this a little bit, this is Chris Major for the record, documents related to Process Holdings Limited, and its lawsuit against the other P&ID shareholder, which is Lismore Capital. So the way that the VR respondents invested in this award is they set up an entity which we refer to in our letter as PHL, which is Process Holding Limited, and

they used that entity as the investment vehicle so that entity is the 25 percent, it's fully owned by the VR respondents and it's the 25 percent member in P&ID.

It initiated an arbitration against the selling party in the England and we've asked for information concerning that arbitration. So after purchasing the award, and after some developments in the English Courts and presumably after the discovery that we obtained from banks here in New York which included in our view bribe payments by representatives or affiliates of P&ID to in one case the daughter of the Nigerian official who signed off on those underlying GSPA agreements, after those events occurred the VR respondents through their investment vehicle, PHO, initiated an arbitration. Obviously they were making a claim against the selling party that probably relates to the fraudulent nature of the award and we've asked for information concerning that arbitration proceeding. Obviously we're not entitled and we're not seeking privileged information, but the non-privileged information, to the extent it exists regarding that award is relevant to, again, the existence of a fraud and various actors' knowledge about that. And for that reason we've asked for

discovery on that point and through our extensive meet and confers we've been advised that that information will be withheld and not produced to us.

THE COURT: Mr. Chivers?

MR. CHIVERS: Yes, Your Honor. With respect to the internal shareholder arbitration, a few things. One is that there is no indication that the VR respondents performed some kind of external or extrinsic investigation or analysis leading into that shareholder arbitration. It was filed after a Court in England held that there was a strong prima facie showing of fraud. And that was very clearly the even that precipitated the internal shareholder arbitration. It does not indicate that the VR respondents are in possession of some kind of additional evidence beyond what's in the English proceeding as the basis for that arbitration.

With respect to what the VR respondents have produced or have said they will not produce, the letter that Nigeria attached at ECF 53.1, which is a letter from prior counsel for the VR respondents dated August 31, 2022, lays out the approach that the VR respondents have taken with respect to producing documents from the internal shareholder proceeding.

And the VR respondents have said that, you know, they have, they are producing, and that production is now done in the Schofield action, relevant non-privileged attachments to the internal arbitration documents and the VR respondents have committed to producing any new non-privileged contemporaneous evidence concerning the fraud allegation submitted in the arbitration.

In other words, the VR respondents have said if there is anything in the internal shareholder arbitration that constitutes evidence, you know, facts, testimony, that is extrinsic to what was already presented in the English proceeding, it will be produced. And the VR respondents have made that commitment. I'm not aware of anything else that needs to be produced, which is -- which is I've asked them, and I'm not aware of any additional documents to produce.

So I'm not sure where there is to go on this issue. I don't believe there are any additional documents that need to be produced related to the arbitration. I'm not sure what more Nigeria wants.

THE COURT: Mr. Major, do you want to, I'm, I guess I'm a little confused as to what exactly Nigeria is seeking with this request?

MR. MAJOR: Your Honor, so what we're seeking are all of the non-privileged documents relating to that arbitration and its filing. The subject of the meet and confer, we were told that the, that they were not going to -- this was a contested scope issue that the VR respondents had taken the position even with prior counsel that the proceeding is irrelevant to the English trial and, therefore, they're not going to produce them.

You know, if we have the commitment of the VR respondents that they will, in fact, produce all of the non-privileged documents relating to that arbitration, that's obviously, you know, all we're looking for, so if we can have that commitment then I think we can put this issue aside. But we have not previously understood, including from the letter that counsel referenced, that they were going to actually produce all of the non-privileged documents relating to the arbitration.

From what counsel said today it sounds like there is some, you know, some, you know, scope that they're carving out, you know, on a unilateral basis. I think, you know, unless they were to tell us that there was some massive volume of documents relating to

the arbitration, it should be simply all of the relevant -- all of the documents concerning that arbitration that are not privileged, we'd like all of those documents produced. So that would be the commitment that we would ask counsel to make on this issue. And that could include, you know, copies of the pleading, it could include discussions that are not attorney-client privilege in emails and so forth. Excuse me -- we obviously don't know the whole range of what the documents are having simply haven't been produced, but I would expect it to be a fairly limited amount of documents given the relative recency of the arbitration filing and obviously, you know, they're entitled to and we expect them to withhold the privileged documents.

MR. CHIVERS: Jeff Chivers, Your Honor, just to clarify what the VR respondents have committed to produce because I think there may have been some uncertainty expressed by Mr. Major. The VR respondents have committed to produce any non-privileged evidence, not argument, not a statement of argument that's made in the arbitration, but any evidence that is distinct from what was presented to the English Court in the English proceeding. And the

VR respondents have also committed and have produced attachments that are non-privileged in the internal arbitration.

So it's not correct that the VR respondents have committed to produce everything related to the internal arbitration because it is not accurate that everything is relevant to whether the GSPA was procured by fraud and wehther the award was procured by fraud. The scope of the internal arbitration proceeding is not limited to the issues that Nigeria is asserting in the English proceeding, and we've said with respect to the claims that Nigeria is asserting in the English proceeding, if there is any evidence related to those things that is not in the English proceeding, itself, then it will be produced. That is the commitment that the VR respondents have made and I think as we stated in the August 31st letter at ECF 53.1, that should be sufficient. We don't see why additional documents would be relevant to the English proceeding or should be produced.

THE COURT: When, Mr. Chivers, when you say evidence, not argument that is distinct from what was produced in the English proceeding, are you, are you basically saying that if you've already given it over

in the English proceeding you are not turning it over. But to the extent it's all non-privileged relating to the arbitration, you are committing to produce it?

MR. CHIVERS: It's the, so, Your Honor, the documents, themselves, as Mr. Major described, I haven't seen all of them, but there would be filings made in connection with the arbitration and some of those filings would be statements of legal argument, some of those filings could be evidence, evidentiary material. And what the VR respondents have committed to produce is any evidentiary material that was not taken directly from the English proceeding because the VR respondents, well not the VR respondents but an affiliate, filed the internal arbitration based upon an English Court finding a prima facie case of fraud.

And we've committed that if there were, if there were any other evidentiary material other than what was already in the English proceeding, then we would produce that.

THE COURT: Okay, but you wouldn't be producing -- so I guess in your mind what's excluded, like if there was a brief or some motion argument, stuff of that nature is not getting turned over?

MR. CHIVERS: Not under the current

commitment, Your Honor, that's correct.

THE COURT: And, Mr. Major, why would you need the stuff of that nature, so legal arguments, briefs, et cetera?

MR. MAJOR: Well, Your Honor, for example, the statement of claims in that arbitration, if the VR respondents are making allegations of fraud against their partner and the investment of the award, I think that that's relevant. They presumably, PHL, the claimant, had a, has a basis for making those allegations and the basis, you know, might be revealed through the pleadings.

I haven't heard any arguments from the VR respondents as to any prohibition on them producing these documents and I don't know what stage the arbitration is. It sounds to me, because Mr. Chivers said they're going to produce evidence from that proceeding but he's unaware of any such document production that they'll ever make, which tells me the VR respondents know that the arbitration has not yet advanced to the stage where evidence is given, but there are other documents and it might even include emails. There might be a demand letter. There might be things that contain allegations relative to the

fraud. I don't see and have not heard any specific argument, as to how there could be anything in that arbitration that would not be relevant to the overall fraud that's at issue in the English set aside trial, after all, the only business of P&ID is the prosecution of this fraudulent award. VR respondents made an investment through investment vehicle PHL in that award and is suing its partner over that investment. So it's certainly, and counsel has indicated today that the reason the arbitration was filed is because the English Court found a strong prima facie case of fraud, that's what triggered the arbitration filing.

So, obviously, that arbitration concerns that fraud, and we are entitled to everything that is non-privileged. I don't, other than for some tactic, I don't see why the VR respondents are trying to, you know, divide materials from that proceeding into evidentiary and non-evidentiary and why they would be concerned about showing their legal arguments which may well be, and pleadings and things like that, those things could be highly relevant. But there also may be, and counsel has not spoken to this yet, but there may be communications about the arbitration, whether

with third parties or non-privileged internal communications, which I think we're entitled to see under Section 1782 and shouldn't be that difficult for the production to be made.

But I don't think that the unilateral commitment that they're trying to set forth is sufficient because it clearly is cutting off relevant documents from an arbitration that is centered on the same fraud that the English trial is centered on.

MR. CHIVERS: Your Honor, Jeff Chivers for the respondents. I don't agree at all that there is any indication that we are drawing some artificial line to exclude problematic documents. The line, what we're saying is that the arbitration was based on the findings of an English Court. I mean Mr. Major I believe expressed that there must be some basis for the arbitration but the basis is not that hard to define. An English Court found a prima facie case of fraud by the sellers of an interest in P&ID, not with respect to the selling of the interest in P&ID but with respect to the procurement of the GSPA and the award.

And the privilege issues here are complicated and they are very complicated privilege issues because

the arbitration, itself, is confidential, it's seated in London subject to London attorney work product and litigation advice privileges which are distinct and significant ways from the US attorney work product and attorney-client privilege. And what Nigeria is asking us to do is go through all of the files and make privilege determinations under four different doctrines of law related to documents that don't have any relevance to the English proceeding. Because if it's just an argument made by the VR respondents based on what has already been filed in English proceeding, that isn't that isn't relevant. I mean the documents need to be evidence in order to be relevant to the English proceeding.

And so the commitment we're making is if there is any such evidentiary material we will give it, which dramatically reduces our burden and the fights over, over privileged and legal argument.

THE COURT: Mr. Chivers, I guess to the point of the privilege and I'll admit I don't know anything about privilege law in English proceedings, but I'm a bit confused as to, and maybe they just have a different approach of privilege, but if Mr. Major is seeking, like he gave examples of like a demand letter

or statement of claim, if that's filed in the proceeding there is still some argument that that could be privileged?

MR. CHIVERS: I believe so, Your Honor, as I understand it with respect to without prejudice communications, similar to FRE 408 under US law, but broader as we understand that. That's with respect to something like a demand letter, Your Honor. I would need to, if that's the kind of communication that Your Honor believes could be discoverable, I think I would need to go back and look at the English privilege on them. My understanding is that the scope of the English without prejudice privilege is broader than FRE 408, for example. And with respect to the arbitration, itself, the English privileges can cover documents that are filed even in the arbitration, itself, because they're documents that are as between two parties who have a common interest with respect to the alleged, the fraud that's alleged by Nigeria. So we have to look at the, we have to look at every document and consider, you know, who filed this document and does it constitute waiver of a privilege because it was disclosed to the counterparty in the arbitration. And the answer to that is not always yes

because it can be documents that are, nonetheless, subject to a common interest, notwithstanding that there's a dispute within that overall scope of what is covered by the privilege.

THE COURT: And just to understand the burden of such a review, I don't know how far along you are in this arbitration proceeding but do you have a sense of how many documents you're talking about?

MR. CHIVERS: It's I believe not a massive number of documents. I don't know the exact status of the arbitration other than that it is currently stayed and it had been stayed for some time. This s not an issue that I looked as closely at as the other issues, to be candid, because it was, it was raised rather late in the meet and confer discussions, and Mr. Major can correct me if I'm wrong on that, but this issue came up I think only in the week that Nigeria filed the motion to compel whereas the other issues have been crystalizing over a period of a week or two. I don't know exactly the number of documents, I think it is, you know, less than -- less than 2,000 documents I would estimate based upon what I understand of the status.

THE COURT: Okay. And then just --

MR. MAJOR: Your Honor, I can speak to that. Prior counsel for the VR respondents, just issue has actually been percolating for some time and we've been discussing it with Mr. Chivers but also his predecessor counsel, the predecessor counsel told us there were 35 documents filed in the arbitration by the parties.

MR. CHIVERS: I'm looking at that now, Your Honor, and I just, I didn't want to say, I didn't want to say a number that is inaccurate, that it's definitely less than 2,000. According to the letters here at 53-1, there are 35 documents that were created in connection with the arbitration exchanged between the parties. And there's a further description of why those documents are not relevant and later on at page, on page 2 of that August 31st letter is the commitment to produce any evidentiary material.

THE COURT: So is the issue then just really, if predecessor counsel is correct that the number of documents is 35 and you've agreed to produce all non-evidentiary -- or all evidentiary materials that weren't already produced as part of the English proceeding, then are we really just talking about 35 documents?

MR. CHIVERS: I think it's possible, Your Honor, and I would need to go back to the repository and confirm that.

THE COURT: Okay. And then I just wanted to ask one more thing about, more targeted towards the relevance of the documents, if the arbitration was filed because the English Court made a finding of fraud then Mr. Major had indicated that things such as like the statement of claims or the demand letter could contain allegations relevant to the fraud. And I just wasn't, I wasn't clear what your position was on why that wasn't relevant?

MR. CHIVERS: Well, Your Honor, it's not relevant in the same way that we don't do a relevance analysis of legal briefs that are filed in US court, it's not evidentiary material. And unless it refers to evidentiary material or facts that are extrinsic to the English proceeding, it is a totally derivative action. And the way we see it really is, it is a litigation about a litigation about a litigation, it's derivative to the second degree with respect to whether the GSPA was procured by fraud and whether the award, itself, was procured by fraud. And allegations with respect to disclosures, for example, by the

sellers of the interest in P&ID to the VR respondents really don't have any relevance to whether there was fraud in the GSPA or fraud in the award. And legal arguments about those things as in whether, whether the English Court's finding of a prima facie case of fraud is sufficient to be a breach of some kind of contractual guarantee just is derivative of and has no relevance to the underlying factual circumstances.

THE COURT: So actually that, that makes sense to me so I just, Mr. Major, if you just want to respond to that point because I was persuaded when Mr. Chivers said that, you know, typically legal arguments made in briefs are not really relevant to the underlying factual issues and so if you had a response to that.

MR. MAJOR: Sure. So I think the problem with that construct is Mr. Chivers is, or his clients are looking at these 35 documents and telling us I'll give you what is evidentiary or factual, I won't give you the legal arguments, but then he's also told us that he has, he knows of nothing he is going to give us. Which means they have determined or selected the position that all 35 documents that they've conceded are filed in that arbitration, that they only contain

legal argument and not anything else. Which I think is impossible.

The statement of claims is allegations. The allegations that are made concern the fraud and I think that those allegations are certainly relevant. The fact that the party prosecuting this award and seeking to enforce it in multiple jurisdictions that they are infighting over the fraudulent nature of the award is very much relevant to, again, the knowledge of the parties and there might be allegations in that statement of claim that, you know, reveal specific facts relating to the fraud or the facts and circumstances surrounding any step of this, you know, long, ongoing fraud which is continuing to this day with the efforts to enforce the award.

So I don't see why certainly the allegations, the equivalent of the, of the, you know, the response to the statement of claim, those types of things are pleadings, not legal argument in a brief. But, again, even if there are legal arguments, if there has been any substantive briefing, I don't see why the, it's not a question of admissibility at this stage, it's a question of whether the information is relevant and whether there's some undue burden on the party making

the production. But I think that our client is entitled to see the allegations that are being exchanged between the two parties that are seeking to enforce this massive award against our clients.

So I don't think it's fair to allow one side to just dictate the scope of the disclosure by, you know, drawing a line and then it determines in its sole discretion whether something is going to be couched as being legal argument and I think counsel has taken the position today that a statement of claim is a legal argument and is not, you know, the, like a pleading would be in any arbitration or in any litigation. So we already know how they're going to construe everything but het the Court and Nigeria never get to see it, I don't think that that's fair. And I don't think that the arbitration, there's no argument that the arbitration doesn't concern the fraud, in which case I think the relevance is established and if there is some privilege that attaches to one of the documents, well that's easy, that's something then they'll put it on a privilege log.

But the reason this is in our letter and we're arguing about it now is because they've told us

they're not going to give us any of these documents, whether they're privileged or not. So I think the privilege issue is a red herring because we have not said that they're not entitled to assert the relevant privileges, we never got there because they told us that they wouldn't give us the documents. And so it's really a categorical objection on their part, not a genuine assertion of privilege.

MR. CHIVERS: If I could, Your Honor, with respect to -- I believe there's a little element of a suggestion that the VR respondents are drawing their own lines in a way that's inappropriate or unreasonable. I don't think there's any evidence of that, we're being very forthcoming about what we would produce and what we've committed to produce and what we would not produce. I don't think this is a suggestion that we're doing that in an improper way. And to the extent that the Court is persuaded by Nigeria that the Court should make a determination as to whether these documents that we're describing as non-evidentiary nonetheless need to be produced, I do think that an in camera review would be, could be an appropriate way to handle those documents.

THE COURT: Mr. Major, when you describe, for

instance, the statement of claims, would that be equivalent to like a complaint in a civil proceeding here in the United States?

MR. MAJOR: As we understand it, it's filed with an arbitration tribunal, so I think it would also be like a statement of claim that a party files, for example, in JAMS or a AAA arbitration in the US, but it serves the exact same function as a complaint in the sense that it's the allegations, factual allegations pursuant to which the claimant maintains it has a cause of action against the respondent, and then the respondent has to respond to that with its allegations and I don't know if there are counterclaims in that arbitration or not, but there could be multiple rounds of pleading if there are. But that's right, Your Honor, the statement of claims should look a lot like a complaint looks in the US or statement of claim in the US arbitration.

THE COURT: And Mr. Chivers, when you were proposing the in camera review, if this presumably you would look at the 35 documents, figure out if there is any privilege you can assert as to any number and then have me review the ones that you are not asserting a privilege for?

MR. CHIVERS: That was the suggestion, Your Honor, although I will say I thought of the procedure on the fly in the hearing. So if there's another better way to do it, certainly we're amenable to that as well.

THE COURT: And I would be reviewing them simply to look at whether they would be relevant to the English proceeding, so I wouldn't be conducting any type of privilege review.

MR. CHIVERS: That was our proposal, Your Honor.

THE COURT: Mr. Major, do you have any objection to that?

MR. MAJOR: Your Honor, we certainly don't have an objection to an in camera review, as long as our arguments stand for the Court's consideration that we do think we're entitled to those filings in the arbitration. And the other thing is I would just ask, just given the urgency of the situation, that the Court direct counsel for the VR respondents to make that submission to the Court as soon as possible given the fact that it's 35 documents that they segregated and had collected quite some time ago because they wrote to us about it in the summer. So if that, if

that part of the process, meaning the VR respondents' submission to the Court could happen right away, we would be appreciative of that and then obviously it would be subject to the Court's availability to do the review. But we certainly wouldn't object to the Court also being able to see the documents, we would like our arguments to stand for your consideration and for them to, hopefully our client ultimately getting the documents.

THE COURT: Okay, so let's, on this second point let's do that. I'd like to just take a look at the documents that after Mr. Chivers has reviewed the 35 or so for privilege and taken out the privilege and then whatever is left I'll take a look at them. Mr. Chivers, how much time do you need to do that?

MR. CHIVERS: I think by the end of the week would be difficult but early next week is doable.

THE COURT: So if you -- if you can get them to me, if you can get them to me by November 7th I can commit to get them out, November 11th is a holiday so I wouldn't be able to issue, I don't think there's any docketing for orders, but I could get an order out by November 14th. Does that timeline work for everyone?

MR. CHIVERS: It does for the VR respondents,

Your Honor.

MR. MAJOR: And yes, Your Honor, for the applicants. The deadline for document production in the case is the 30th of November. And as I mentioned at the top of the call, we're running a little bit behind as we've only gotten about 500 documents or so in the initial couple of productions that have been made and we haven't gotten to the meat of it in terms of the individual custodians' emails. But as long as Mr. Chivers can receive Your Honor's ruling on the 14th, and we certainly appreciate the Court acting so quickly, and make whatever production comes out of that, you know, within the current schedule, then we certainly have no objection to that and appreciate the Court prioritizing.

THE COURT: Okay, I think that's feasible as long as, you know, we're talking about, you know, 35 or so documents, give or take, if Mr. Chivers does his review and then all of a sudden we have a significant greater number then, you know, we might have to discuss another timeline. But I can certainly commit to getting an order out by November 14th on that.

I just wanted to circle, circle back to the first category of documents. When, I think this was

Mr. Chivers talking about documents that exclusively pertain to valuation with no information regarding the GSPA, it might have been someone else who mentioned this --

MR. CHIVERS: I believe that was me, Your Honor.

THE COURT: Okay, I'm just trying to get a sense of exactly, like if it was an example of what type of documents we're talking about. And I'll be perfectly candid here, I know, Mr. Major, you've argued that this is relevant, I'm, to be candid I'm struggling to see how it's relevant given that there is various, there's a multitude of reasons why the, why VR respondents could have paid what they paid for the award that doesn't, that isn't necessarily indicative of a knowledge of fraud.

So if you, like I'm -- if you want to come at it in a different angle or spell it out for me, I might not be seeing something that's obviously so you should feel free to walk me through the argument again --

MR. MAJOR: Sure. So let me start by taking it from a different angle that maybe I didn't emphasize enough. So the allegations in the English

trial include the fact that Mr. Quinn and Mr. Cahill and several others working with them, that they fraudulently procured the contract, fraudulently procured the award and then have been, Mr. Quinn is deceased but the others have been since fraudulently and unlawfully attempting to enforce the award.

The sale of the award is part and parcel of the fraud. It shows how much money so far the fraudsters have proceeded in gaining because VR respondents presumably paid a substantial sum of money, you know, whether that be $100 million, $1 billion or $10 million, there's some substantial sum of money that was, of course, paid by the VR respondents to the original fraudsters and that is evidence that is relevant in the English set aside trial and relevant to the overall fraud. The fact that the fraudsters have, you know, succeeded already in liquidating their ill-gotten and fraudulent arbitration award, at least in part.

The other point, Your Honor --

THE COURT: Let me ask you, you know they sold it so like there is no dispute that the fraud, the alleged fraudsters or fraudsters, Mr. Cahill and whoever else, sold the award. So the sale, when you

say the sale of the award is part and parcel of fraud, it would only be part and parcel if you had, and I guess this is what you are trying to get at, but if you had evidence that the VR respondents were in on it, that they knew that the award had been procured fraudulently. But just the sale, in and of itself, couldn't necessarily be part of the fraud if VR respondents didn't have that knowledge.

MR. MAJOR: Your Honor, I guess my response to that would be that not every fact in a case is in itself dispositive. And it may be that the English judge, if and when this argument is made, says I don't care that VR respondents only paid $100 million for a $10 billion award, that doesn't persuade me that they or the sellers, you know, Mr. Cahill, even though he wasn't a direct selling party, but the folks who were 100 percent in control of the award before selling 25 percent to the VR respondents, it doesn't prove to me that they knew what they were selling was a fraudulent award, I'm not persuaded by it.

That might be what the outcome is, but that, it's a different test that at the discovery stage which is can we see what the number is. Because I think, myself, that if somebody pays 1 percent of the

amount of an award, that to me, if I were, for example, a juror, would be persuasive that somebody knew something about the invalidity of the award. You may think different and counsel for the VR respondents may think differently, but I think that it's at least a possibility that that fact, especially when you couple it together with, for example, evidence of bribes and confessions about the bribes and about how this was done, the evidence which the English Court has already credited that Mr. Quinn lied to the arbitration panel in order to procure the award. The improper conduct of counsel in the arbitration. All those kinds of things when you put them all together, and then if you also put on top of that that the, you know, fraudsters were able to, you know, get for a very substantial sum, whatever that number is, pay for it, and the VR respondents paid next to nothing for it, let's say, I think all of those facts together could go to show that the parties who are prosecuting this award and seeking to enforce it, which includes the VR respondents who we understand are the lead and 25 percent owner, that it's a fact that definitely could point to the existence of the fraud and could be beneficial to the arguments being made in the English

set aside trial. But it also does show how the fraudsters have so far succeeded in liquidating the fraudulent award.

So I think, again, Your Honor, I don't think the test for the Court is to determine wehther the potential facts that may come from that disclosure, you know, whether it's persuasive to the Court about the existence of the fraud, particularly just on its own, but really whether it's relevant. And I think that it's clear that when the main issue in the English set aside trial is the fraudulently procured award, transactions concerning that award are relevant and are discoverable and there hasn't been really any argument by the VR respondents as to why they shouldn't produce it. It's something that could easily be collected and produced, it's not going to be a high volume of documents and it's something that can be protected through the use of a protective order.

And so I think for all of those reasons, and we're only at the discovery stage, I think that production would be appropriate and that we're entitled to it.

THE COURT: Mr. Chivers, for these valuation documents, do you have a sense of the volume of what

we're talking about?

MR. CHIVERS: The volume of documents related to the purchase price specifically, I mean the purchase price is a piece of information that is contained in documents related to the investment transaction that are before the English Court. And, again, I think Mr. Major is getting the sequence of events out of line with what we understand to be the appropriate sequence under the Second Circuit law that I cited earlier and this Court's decision in *In Re: Porsche.* Which is if the English Court and if Nigeria really believes this post-award transaction is somehow relevant to whether in 2010 the GSPA was procured by fraud or in 2017 the award was procured by fraud, it has had the opportunity and still has the opportunity to ask the English Court to say so and get the document showing the purchase price from Brendan Cahill who is a custodian in the English proceeding.

We have made several arguments as to why it's not relevant, I don't know why Mr. Major said we haven't presented any argument for that, I don't think that's accurate. And with respect to the trade secret argument Mr. Major made earlier, the purchase price, itself, can be a trade secret even though it is known

by both counterparties. Transactions that are subject to confidentiality occur all the time and just because a transaction is known by counterparties does not lead to a waiver of what is trade secret and confidential information.

And we still just, again, Your Honor, don't see how this could be something that Nigeria can come into a US Court to get when the counterparty to the transaction is before the English Court. If they really believe this is relevant, which we don't think it is, and there is prejudice to having to disclose this kind of confidential information, then Nigeria should present that to the English Court and get a ruling. And if the English Court believes it's relevant then we would have to produce it.

THE COURT: Okay. And, Mr. Chivers, you have said you were relying on the Second Circuit's decision in this case and then I think you had cited one other case, is it in your letter?

MR. CHIVERS: Yes, it's not in the letter, Your Honor, it's *In Re: Porsche Automobil Holding SE*, it's 2021 U.S. Dist. LEXIS 115099 at 20 to 23, that's a decision by the Court of June 21, 2021.

THE COURT: Okay, so I'm going to just, I just

want to look back at the transcript before Judge Engelmayer and I'll look again at the Second Circuit decision and this *Porsche* case. So on this call I won't be able to give you a decision on this first point but I will, I won't take long to issue just a quick written order. So then I think there's still the third issue in Nigeria's letter, but if we could just hold on a minute

MR. MAJOR: Sure.

(PAUSE IN PROCEEDING)

THE COURT: Okay, so sorry about that. So the third issue, Mr. Major?

MR. MAJOR: Yes, Your Honor, if I could beg the Court's indulgence just on the last point. The Second Circuit, and Your Honor will see this in the case and in the cases that, you know, the Second Circuit decision in the *Nigeria* matter, but also I mean literally for the last three decades the Second Circuit has made clear that Section 1782 imposes no exhaustion requirement. We're not required to go get documents elsewhere.

I think just from a factual standpoint, just to make sure the record is clear, Mr. Chivers points to the actual purchase agreement that he says Mr.

Cahill is in possession of. Even if this Court were to impose and exhaustion requirement, which is contrary to Second Circuit precedent, we're not looking, we're not asking the VR respondents for Mr. Cahill's documents, we want their documents. And their documents are going to include more than just a number and a contract, they're going to include their own internal deliberations and information concerning the value of this award and what price they should pay. And there's been now showing at all by the VR respondents that that would be tantamount to a trade secret under, for example, The Uniform Trade Secrets Act.

So I just wanted to make sure that it was clear on the record what, what's at issue in terms of our request, and we do not want Mr. Cahill's documents.

But the third point in the scope, and this is --

THE COURT: I'm so sorry to cut you off, Mr. Major, but since you said something that prompted a question, if you don't mind. So you want more than just the price paid for the transaction because presumably, or for the award, presumably the price you

could get from Cahill. To the extent you want the internal deliberations that led to whatever price VR respondents paid for it, you think that's not going to come out of the diligence files that they're already searching and producing documents for?

MR. MAJOR: I think that it should but they've told us they will not produce those documents that include valuations. So it probably would be in the diligence file, it's probably also attached to emails of the various custodians, but it's the, you know, it probably is in that diligence file which they told us they're not going to give it to us and that's why we raised this scope issue among the three for the Court to consider.

THE COURT: Okay, I, now that's clear in my mind.

MR. CHIVERS: May I clarify a couple of points, Your Honor?

THE COURT: Sure.

MR. CHIVERS: This is Jeff Chivers for the VR respondents. With respect to whether there's an exhaustion requirement, that's not our argument, that the Second Circuit has said there's no exhaustion requirement, that's true. But the *In Re: Porsche*

decision, nonetheless, clarifies that even if there's not an exhaustion requirement, the fact that the party can and has chosen not to get the document from the foreign tribunal that's presiding over the proceeding is a significant factor in whether to grant the discovery demanded. And in a close call, which we still think, you know, maybe Your Honor thinks this is a close call and we think that the Second Circuit and the *In Re: Porsche* decision provide a clear answer to a close call like this, which is Nigeria should make this argument to the English Court and if the English Court thinks the documents are relevant, Nigeria can get them then.

With respect to VR valuations, it sounds like Nigeria wants more than just the purchase price. The purchase price they can get from Brendan Cahill in the English proceeding if the English Court believes that's relevant. With respect to valuation I did say, and just to clarify again, you know, to the extent any documents relate to valuation of the investment in P&ID or the award and they relate to the underlying circumstances of the procurement of the GSPA or the arbitration proceedings that led to the award, then those would be produced because they are responsive to

the procurement of the GSPA and the procurement of the award.

But if it's a document that just discusses valuation because of overall credit markets or Nigeria's creditworthiness, or the assets that Nigeria has in jurisdictions that will recognize enforcement, or a document that just has the valuation and is discussing how to account for it, for example. I mean there's, this I a hedge fund, you know, they talk about investments without talking about the underlying circumstances of something like this. And our point is that the information of how a hedge fund values and investment in the global credit markets is really useful information to the outside world, it is a trade secret. I mean this is the kind of knowledge capital that hedge funds develop in how to evaluate an award like this in the context of the overall global credit markets and that just isn't relevant at all to whether the GSPA was procured by fraud or the award was procured by fraud.

If there is something that relates to a valuation based on, you know, the procurement of the GSPA or based on the arbitration proceedings that led to the award, we would produce those because they're

responsive to other categories that we've agreed to produce.

THE COURT: Okay, so that's, that was very helpful. Mr. Chivers -- Mr. Majors, if they're going to produce the valuation documents that relate specifically to the procurement of the GSPA, what's your argument for the category of valuation documents that Mr. Chivers identified which would just be identifying things such as Nigeria's credit risk, et cetera, that would not really pertain or discuss the GSPA or the arbitration proceedings?

MR. MAJOR: Your Honor, again, it's very difficult for us to be stuck in the dark on these things. Mr. Chivers is making, I don't know if he's representing to the Court that he's reviewed these documents and that's what they say, or if he's speaking hypothetically just because his client is a hedge fund and that's what his general understanding is of what hedge funds do.

What we've asked for are the documents relating to the valuation of this particular award, we're not interested in their institutional knowledge and how they would do this in a future situation or anything like that. We want to see the value that

they placed on this very award and it's, I don't think it's sufficient for counsel just to make a couple of general statements about what might exist and then they get to make the call about any visibility, about whether in their view the valuations that they have in their documents here in the US, and I'd just like to cite the Court to the case *In Re: Topps Matrix Holdings*, three words, *Ltd.* and it's 2020 WL 248716. That makes very clear that contrary to the *Porsche* case where the documents were, that were being sought were in the possession of a German subsidiary involved in litigation over there, the test in the *In Re: Topps Matrix Holdings* case alludes to this or holds this, the test is whether the documents are here in the US and there is no denial that they're here in the US.

But we want the valuation documents. If there are documents that counsel maintains are sensitive and deal with credit markets and things like that, I think that that's something that could probably be handled with an in camera review if that really is the concern. But my concern here is that there is going to be across the board no productions relating to the valuations on the grounds that it all is, you know, secret information and goes to their methodology and

doesn't say, you know, something that fits into one of the other categories. This is one of the categories that we want production on and they can't point to Mr. Cahill and say you can get it from the English Court. That's not the requirement under US law and Second Circuit precedent. We're asking for VR respondents' documents that indisputably located here in the Southern District of New York and, therefore, are subject to production under 1782.

THE COURT: Mr. Chivers, to get an, just to get an idea of the scope again, do you have a sense of how many documents you would be withholding based on the, like based on the notion that they would just be talking about the knowledge of how to value something abstractly that doesn't relate to the GSPA or the arbitration proceeding?

MR. CHIVERS: I believe it's in the hundreds or thousands, Your Honor, because the email collection includes portfolio, I mean we've given the chief operating officer, former and current, and the emails include documents that are just valuations and analyses of the overall portfolio of the hedge fund.

I mean the overall portfolio, just as an example, is something that would be devastating for

the VR respondents to produce. I mean hedge funds can't be just giving out their portfolio list because Nigeria is interested in the price and the valuation that went into one investment. That's just an example. It is a real example that I have seen and we don't view that as relevant to anything that's going on in the English proceeding.

And with respect to the valuation of P&ID, for example, it's not just hypothetical or abstract, the decision whether to invest in an award like this against a sovereign does touch upon the credit markets broadly, the other bonds that the sovereign has issued, the creditworthiness of those bonds, the interest rates on those bonds. I mean it's not just an analysis, it's not a simple analysis and it does provide substantial insight into the institutional knowledge of the hedge fund. And I don't believe it's correct to say that we're withholding anything based on this.

If there's a document that's non-privileged and addresses the procurement of the GSPA or the procurement of the award, that gets produced even if it is part of a document that's discussing valuation. And what we've said we don't need to produce is the

purchase price, which is available in the English proceeding, and although there is not an exhaustion requirement, the case law we think makes clear that in a close call like this they should go to the English Court and get that purchase price.

And with respect to valuation documents by VR that are unique to the VR respondents, what we've said is we are not going to produce a document that relates generally to valuation, but if it does address the procurement of the GSPA, the procurement of the award, then that gets produced because we've agreed to produce those categories.

THE COURT: And I think Mr. Major had indicated a concern that there had been nothing produced under this category, is that just because you're still reviewing documents and it could be forthcoming or is there really, is it your position that there's no documents that are responsive under that -- when I say these documents I mean the ones that you talk about valuation that relate specifically to the GSPA or the procurement of that award?

MR. CHIVERS: We are still reviewing documents, Your Honor, I don't believe, and I'm reviewing a lot of them given the circumstances which

I think although Mr. Major has been a little bit careful about it, there's sort of an undertone of the VR respondents aren't playing this on the up and up. That's come through in various statements. We certainly dispute that but I'm personally reviewing a lot of these documents and I haven't seen a document yet that involves a valuation of the P&ID investment that touches upon the circumstances of procurement of the GSPA, the circumstances of the award. There may be, we are still reviewing, Your Honor, but keep in mind that when the VR respondents invested in this, it was an award that would be recognized out of the New York Convention. It was an investment in the award that could be enforced, it was not an investment in something that required looking into the underlying details. But our review is ongoing and if there are such documents that relate to procurement of GSPA or procurement of the award, they will be produced pursuant to the commitments we've made.

THE COURT: And then as I said, I'm going to take a look at the two cases that both parties have just pointed me to and I'll take a look at the Second Circuit decision again and then Judge Engelmayer's transcript. Do you have, are there any -- when you

talk about documents generally that pertain to valuation, that generally pertain to valuation for the award, is there, are there any sample documents that I could look at to get a better sense of what exactly you're talking about when you're saying these are documents that you don't think you should produce because they just pertain generally to valuation?

MR. CHIVERS: I don't know of a specific comprehensive memo that pulls all these things together, Your Honor.

THE COURT: But --

MR. CHIVERS: When I described the valuation it was in terms of documents that, that analyze the financial markets broadly and Nigerian creditworthiness or other Nigerian debt that's been issued, for example, which goes into the valuation. But I'm not aware of a document that is, you know, labeled valuation methodology for the P&ID investment or something like that, that would represent a consolidated valuation. I haven't seen that document yet, I'm not sure it exists.

THE COURT: No, and I'm sure my question wasn't clear, I just wanted to see examples of the types of documents you're not going to produce because

based on the arguments you've made today you would say they discuss generally the credit markets or Nigeria's creditworthiness, or something that's not related to the GSPA. I just wanted to see the types of documents that you would be withholding.

MR. CHIVERS: Understood, Your Honor, it's something that I can work on certainly. I'm not certain exactly what documents Your Honor would like to see, although I think I have a good sense, if that's something that Your Honor would like to be submitted in camera so you understand what I'm referring to. I think we certainly would be amenable to that.

THE COURT: So I'm not trying to make more work for you, Mr. Chivers, so I don't, I don't need like, it's hard to talk about this in the abstract. So if you had one or two documents you wanted to point me to that were representative of what you think are the valuation documents that talk about valuation of the investment generally that would not be responsive to the request, I think it would be helpful to see. But if that's, if that's not really something feasible within the scope of the documents you have, then you should let me know.

MR. CHIVERS: I am just not sure, Your Honor, that there are documents that are specific to the investment in P&ID, related specifically to P&ID that aren't just documents that are following the creditworthiness of Nigeria. I've personally seen documents following the creditworthiness of Nigeria and other bonds that Nigeria has. I will say, a lot of the documents that I'm describing now are also privileged communications with attorneys because, for the most part, the efforts related to enforcement are efforts that are undertaken by attorneys. But I think if Your Honor is referring to at the time of the investment in P&ID and documents related to the valuation thereof, that's something that I can look into after this conference and I can attempt to provide examples of that.

To be totally clear, I'm not aware of a comprehensive valuation document and I'm certainly not aware of a document that speaks about valuation in terms of the underlying circumstances as to procurement of GSPA or procurement of the award, and those would be produced pursuant to the commitments we've already made.

THE COURT: Okay, I think I understand. So

let's just, let me read the two cases and I'll reread the Second Circuit's decision and I'll look at what happened at the hearing transcript before Judge Engelmayer. So I don't, like I said, like I know there's a time crunch here and November 30th is the deadline, so if I think I need more I'll come back to you, I'll come back to the parties but so then don't, don't -- hold off on my request, Mr. Chivers.

MR. CHIVERS: Understood, Your Honor, thank you.

THE COURT: So I think we were moving on to the third category?

MR. MAJOR: Yes, Your Honor, this is Chris Major for Nigeria. The third and final scope issue we raised in our letter are documents related to lobbying and public relations work that was undertaken by P&ID, specifically through the VR respondents' former counsel, Kobre & Kim, and also two public relations firms. And those, the lobbying efforts, as we've been able to determine from publicly available information, were, in our view designed to try to influence various constituencies regarding Nigeria and the attempts to enforce this award.

For example, there has been a long running

website called P&ID facts pursuant to which the folks trying to enforce the award have been putting out information which, you know, our client would certainly dispute, and also following the various litigations and things like that. There have also been letters written to English politicians and US politicians and the Department of Justice, in our view, in an attempt to facilitate and as an ancillary campaign in furtherance of the award.

We have asked for these documents which include communications with non-lawyer lobbyists and public relations professionals and we, in a categorical privilege log which just generally described the group of documents. The VR respondents have taken the position that these documents are somehow privileged and we've cited a couple of cases in our letter which I think demonstrate the (indiscernible) positive of the privilege claim because obviously communications with the non-lawyers are outside of any potential litigation and outside of any attorney-client communications or work product. And I think on the strength of the two cases that we cited, and the facts which are not disputed, the privilege log makes clear, and in our discussions with

the VR respondents dating back to the summertime, you know, no one has disputed that there communications with the public relations firms and lobbyists that are not, that are obviously non-legal communications. And for that reason we think those documents should be produced.

THE COURT: Mr. Chivers?

MR. CHIVERS: Yes, Your Honor. First, a clarifying point about the documents that Mr. Major described as having been put on a privilege log. Those documents were put on a privilege log in the Schofield proceedings, I don't think it's procedurally proper for Nigeria to assert, to challenge a privilege claim that was made in the Schofield proceeding in this proceeding. There has been, although I think there will be, in the interest of candor I think there will be documents put on a privilege long from this, from the production that we're underway, but there is no, there is no document that's on a privilege log in this case. That's, those documents he's referring to are in the Schofield matter, I don't think it's procedurally proper to point to those documents produced in the other case and then assert that they should be, you know, this Court should rule on them

now.

With respect to -- but before getting to the privilege issue which I do want to respond to, having looked at this issue many times I do not see how Nigeria connects the dots between the VR respondents working with either lobbyists or public relations people in 2019 and later being relevant to whether a contract in Nigeria was procured by fraud in 2010 or the award was procured by fraud in 2017. It is a non sequitur, there is absolutely no relevance to those communications.

With respect to the privilege argument, there are two decisions by this Court that are on point with respect to the public relations personnel and the lobbyists, those are *In Re: Grand Jury Subpoenas* dated March 24, 2003, which is cited at footnote 4 in the respondents' letter at ECF 55, and the second case which is not cited in the letter is *In Re: Copper Market Antitrust Litigation,* which is 200 F.R.D. 213 at 219. That's a 2001 decision by this Court. And those two decisions are the squarely applicable authorities with respect to the working with lobbyists and public relations personnel in the context of overarching litigation.

Now when these lobbyists send PR personnel or engaged, there was already litigation going on. And the coordination among the members of a litigation team are classically privileged material. Now the statements that a PR professional made on behalf of a client to some public source, that's not privileged when they make that communication, or the statements made by a lobbyist to somebody else, that's not privileged, but the internal communications of the team that's working on litigation, even if they are lobbyists or public relations folks is within privilege as the two cases that I just cited held. And we think those are directly on point.

The decisions cited by Nigeria on page 2, one is *Igiziaran* (phonetic), that's 290 F.R.D. 421, that's a case where the Court was specifically construing New York law, whereas here English and US federal law govern. There were no looming criminal proceedings in that case, here there were. And the client in that case in *Igiziaran,* was not a company and that was the ground on which the Court distinguished *In Re: Copper Market Antitrust Litigation.* Here, the clients were companies and the *In Re: Copper Market Antitrust Litigation* directly applies.

With respect to the *In Re: Chevron Corp.* case, which is also cited by Nigeria, that's a case looking at a lawyer who was not working in a legal capacity, he was doing things unrelated to the litigation and that is distinguishable on that ground as well. So if the Court were to reach the privilege --

THE COURT: I was going to say, I don't mean to cut you off, Mr. Chivers, but I'm, on this one I just don't, I don't understand the relevance so I'm not, I'm not going to reach the privilege issue because I don't think there's been a threshold showing as to why these documents would be relevant to showing that the contract or the award was procured by fraud several years earlier.

MR. CHIVERS: For the VR respondents certainly that is the right decision, Your Honor, we just don't see how they can connect the dots.

THE COURT: Should we, should we move on to the custodians?

MR. MAJOR: Your Honor, this is Chris Major for Nigeria. On the custodians, we have asked for two additional custodians for whom searches have already by conducted by the VR respondents at our request. And they are Mr. du Toit who is the chief financial

officer of VR respondents, and he also is the director of the PHL entity which is the investment vehicle for the award set up by the VR respondents. And then the second additional custodian is Richard Deitz, he's the founder of VR Capital, and Mr. Deitz has direct involvement in the procurement or purchase of the award and the investment and in all likelihood the attempts to enforce the award which are, is part of the fraud. The enforcement of the award is a continuing part of the fraud and the whole goal of the fraud is to ultimately turn the fraudulently obtained award into cash and that's -- or other assets.

So that's, you know, the ongoing enforcement in part and parcel of the fraud, and the English Court in its judgments back in September of 2020 that permitted Nigeria to go forward with the English set aside trial that is upon us, you know, specifically, you know, referred to that, the ongoing nature of the fraud including attempts by P&ID's prior counsel, which was Kobre & Kim, just like that also represented the VR respondents, their attempts to block our original Section 1782 proceeding against the banks. The English Court cited that as furtherance of the fraud in terms of trying to impeded Nigeria's ability

to collect information.

So just to give you, the Court, a few facts to show the relevance and the fact that Mr. Deitz and Mr. du Toit do, in fact, have highly relevant documents, and I think that this, these facts may, among other facts, make the cases that the VR respondents cite in their letter obviously distinguishable. You know, they cite to cases where executives of very large corporations and multinational corporations, you know, can't be forced to, for example, sit for a deposition or have their records searched if it's, if there is no basis to believe that they are, you know, directly involved in whatever the situation is, you know, whether it be a transaction or whatever. Whereas, here, first of all, the VR Capital is not a gigantic corporation, it's a relatively small operation, it is part of, it's an investment company, it's a hedge fund, as Mr. Chivers has described it, it doesn't have thousands of employees and all different kinds of operations.

Mr. Deitz, and from what I can tell on the internet, I didn't take this from VR's website, but it appears that VR has roughly $4 or $5 billion under management. This, you know, purchasing 25 percent of a

$10 billion award is a very big deal for the VR respondents, so it's unsurprising that Mr. Deitz has been heavily involved and the hit counts bear that out.

So, for example, and the other thing the VR respondents do is they point to, you know, Mr. Nemser as having a lot of relevant documents, and he does, but so does Mr. Deitz. The hit count for Mr. Deitz for the term P&ID, he has over 10,000 hits. For process and industrial spelled out, he has over 11,000 hits. For GSPA, he has 2,800 hits, and I'll give you one further example which is Taiga, T-A-I-G-A, that's referring to Grace Taiga and/or her relatives who were recipients of bribes. Grace Taiga was in the Ministry of Petroleum and signed off on the GSPA and has received numerous bribes. Mr. Deitz has 1,499 hits with her last name, there is no other explanation for why he would have any documents with her last name except for the fact that he has been heavily involved in the process of acquiring the award and attempting to enforce the award. And for that reason I think it's obvious that he should be added as a custodian.

Mr. du Toit has less documents but still as CFO, as you would expect for such an important

transaction through his hedge fund, he also has thousands of documents. For process and industrial spelled out, he has 8,549 hits. For P&ID, the acronym, he has 1,656 hits. And so I think, again, it shows that these are not two high level executives who know nothing about some relatively small matter, they are high level executives who have been directly and heavily involved in the acquisition of the award and the attempts to enforce it. And for those reasons I think they obviously should be added as custodians and shouldn't have been excluded in the first place.

THE COURT: Mr. Major, when you talk about the hit count, so, for instance, with -- with Mr. Deitz, where they also that, where the VR respondents say that they have produced the documents or the custodian is Joshua Nemser, when you talk about hits pertaining to Mr. Deitz, these are hits that don't, like so for emails I wouldn't also hit upon -- so they're unique hits, they're not ones where Mr. Nesmer was also a custodian of the email because he was cc'd or copied or somehow involved in the chain?

MR. MAJOR: I would doubt that they're all unique hits, there probably are unique hits but I would assume that once the VR respondents ran their

deduplication process, that what they would actually have to review would be lower than the numbers I just shared with the Court. The reason for my sharing those numbers with the Court was to counter the argument that counsel for VR respondents made in their letter that these two gentlemen, you know, are not likely to have relevant information when, in fact, the hit counts bear out that they do. But, again, I would assume that, for example, Mr. du Toit and Mr. Deitz, as CFO and as the founder and CEO, respectively, that they are probably on some of the same emails so they should get, through the deduplication process those numbers would come down in terms of what needs to get reviewed and produced. But the problem is we know, for example, Mr. Deitz is on a document which was the original email pursuant to which the VR respondents started to consider making the investment and he was the only person on that email from the VR respondents. So that's just an example of what we will miss if, in fact, Mr. Deitz is not a custodian on the list of the collection and production of documents.

The only reason we have that document is from a prior discovery dispute with prior counsel we were discussing how to figure out limiting the date range

to lessen the burden for the VR respondents to collect, review and produce documents and they represented to us and provided us a copy of that email just to demonstrate to us that that email was the first involvement by the VR respondents in August of 2017. But, again, so that's the only document we have from Mr. Deitz' email account, but there are, you know, presumably and undoubtedly additional emails where they're not going to be duplicated because, you know, we have, the only document we ever got from his inbox, you know, was a communication where he is the only one on it. But, again, the deduplication process will take care of the emails that are already in the email accounts of the agreed upon custodians but obviously we'd like to make sure that we get all of the relevant documents. And to do that we have to have as custodians these two additional individual who were heavily involved in the transaction and the attempts to enforce the award.

THE COURT: Okay, Mr. Chivers?

MR. CHIVERS: Thank you, Your Honor. I want to start by pointing to the, I think the initial premise of Nigeria getting documents from Mr. du Toit and Mr. Deitz which is that the enforcement of the award is

part of the fraud. The assertion that the enforcement of the award is part of the fraud sounds to me like an accusation against the VR respondents. I think it is unmistakable, and that is an entirely inappropriate basis to seek discovery in this case. If that is the theory now based on nothing that the VR respondents are part of the fraud because they sought to enforce an award that was rendered by three distinguished jurists in London, and that is part of the fraud, and that's going to be the basis for getting additional discovery, I think that there's no support for that.

The enforcement of the award is also not part of the English proceeding which is the anchor of any proportionality or relevance analysis here, and Nigeria laid out in ECF 4 in its declaration the English proceedings, and those seek to set aside the award based on the procurement of the GSPA and the procurement of the award. The enforcement is totally outside the scope of that. So to use the enforcement of the award as a basis for expanding discovery has no basis in the application that was granted.

With respect to the, the allegation by Nigeria that Mr. du Toit and Mr. Deitz were directly and heavily involved, there is no evidence of that. The

only thing that they point to is a search term hit report, and I'll mention -- and I'll get to that in a moment. But Nigeria has gotten broad discovery from numerous witnesses in numerous forums and they have not pointed to any fact or document suggesting that Emile du Toit or Richard Deitz would have knowledge or evidence related to the underlying GSPA or the arbitration proceedings that led to the award. They have put in nothing to support that assertion.

And the cases that we cite in footnote 7 of our letter say pretty clearly that the party seeking discovery cannot get to the top executives' email accounts with so little of a showing. I mean here there is no showing.

With respect to Mr. Deitz being on the original email, that's unsurprising, he is the head of the fund and he got an inbound inquiry related to the award being, or related to the award, related to P&ID and I think Nigeria has already acknowledged that it has that document.

With respect to the search term hits, the search term report that Nigeria is referring to was run on a time period that expand from 2017 until October, 2021, more than four years. And during those

four years there have been enforcement proceedings, there has been Nigeria's action to set aside the award, there have even been Section 1782 proceedings, and every one of those documents makes reference to P&ID and GSPA and a lot of them make reference to Grace Taiga, too. And it is totally unsurprising that this number of documents would show up because Nigeria is creating them and the VR respondents are creating them in the course of litigating in multiple forums. So Nigeria is pointing to, I mean it has caused an expansion in the number of documents that have these search terms through the various litigations, and then it's pointing to those search terms as a reason to expand discovery, and it has no other basis to do so.

With respect to burden, the burden would be very substantial to review the CFO's and the president's emails. The search terms that Nigeria has demanded and that we've agreed to are extremely overbroad. The term Quinn, for example, hits on every email that has Quinn Emanuel in it. Quinn Emanuel has represented the VR respondents in other litigation and represents them in the English proceeding here. And we're going through thousands of emails related to Quinn Emanuel doing things that have nothing to do

with this overall litigation. And the other search terms similarly are overbroad and go well beyond the procurement of the GSPA and the procurement of the award.

And with respect to burden of reviewing the CFO and CEO, I would have to do a different kind of review for those emails. I mean this is, we're talking now about the CFO and president of a global hedge fund and overbroad search terms that are going to pull in things like their entire investment of, you know, their entire portfolio, communications about their entire portfolio, communications related to decisions that they're making unrelated to this and unrelated to the procurement of the GSPA and the procurement of the award. And I can't just send that to an outsource shop to have people that we don't know and that the VR respondents don't know just reviewing the sensitive, commercially sensitive emails of a global hedge fund, the burden would be enormous. And the burden is not balanced out by a likelihood of probative material, they just, they haven't come close we think to making the showing that the case law requires to expand the search and we have given the, you know, we've given the portfolio manager who conducted the due diligence

and has worked most closely on the investment, we've given them the former general counsel who was the general counsel at the time the investment was made, and the former and the current chief operating officer of the company.

We think that we've given enormous concessions with respect to custodians and that they haven't come close to making the showing to get at the top executives. It would also be a terrible precedent, frankly, Your Honor, if any time there's a dispute related to a portfolio investment, that anybody who wants documents from the head of a hedge fund or the CFO of a hedge fund, just needs to point to, you know, the fact that, they need to point to almost nothing and they get access to those extremely sensitive emails. We don't think it makes sense and we don't think it's supported by the case law.

THE COURT: Mr. Major, specifically talking about Mr. Deitz right now, other than the August, 2017, email, is there anything you can point to that would show he was in, he was heavily involved in acquiring the 25 percent award --

MR. MAJOR: Yes, Your Honor.

THE COURT: And I heard about, I heard the

search term hits, but other than the search term hits and the August, 2017, communication.

MR. MAJOR: Yes, Your Honor, there are emails that have been produced, including a whistleblower came forward for the VR respondents to disclose the fraud to the VR respondents. Mr. Deitz is on that email chain. It's been produced from another custodian, not from Mr. Deitz' files obviously because that's been refused. But, yes, so we have seen him on other emails.

But, Your Honor, I don't think the hit count should be dismissed. That hit count, by the way, Your Honor, was determined back when we had over 100 search terms under consideration. In terms of the burden, we have since agreed with counsel for the VR respondents to just 29 search terms and we have not been provided with a fresh hit count based on that production.

With respect to the term Quinn, I'm sorry that it's increased the amount of documents that have to be reviewed per what counsel has just said, but they agreed to the term Quinn. In any event, I don't think it's proper to start raising burden issues at this stage when what we were told in our meet and confer is you're not getting anything from Mr. Deitz and Mr. du

Toit, they didn't say, hey, he has a lot of Quinn Emanuel emails, can we talk about that, they said you're not getting them. And this idea that the cases that deal with executives who are not involved in the disputed transaction or in the product liability issue or what have you, those cases have no applicability.

I know that counsel keeps referring to it as a global hedge fund, but it doesn't have a lot of employees. These organizations are nimble. And Mr. Deitz, the fact that he has so many documents using these very particular terms that go to this transaction, demonstrates that he is heavily involved. And some of the arguments that the VR respondents are making don't make any sense frankly, because you can't say that he wasn't involved and then say, you know, that the reason he has so many hits was because of the litigation. Well that means he's getting copied on everything and he wouldn't be getting copied on everything if he was some disconnected president who only deals with big picture issues and doesn't get involved in particular investments. I don't think that represents how hedge funds operate, especially smaller ones like this and, again, this is an investment in one quarter of a $10 billion award and a hedge fund

that, as far as I can tell, has between $4 and $5 billion under management, this is an incredibly important investment for this hedge fund and that's why its president and founder is involved. And the fact that he's involved is enough for us to get his documents. And the same goes for the CFO.

This isn't a case where, you know, somebody is injured in a car accident and wants to take GM's CEO's deposition, you know, this is a case, Mr. Deitz was, in fact, involved, and I don't think it's reasonable for the VR respondents to say you haven't come forward with emails, with Mr. Deitz' emails, well because you won't give them to us. And we're not expanding the search, Mr. Deitz and Mr. du Toit have been identified as custodians we want from the beginning of the meet and confer process, we were just told no and that's why we, you know, at the conclusion of the meet and confer we brought it to Your Honor's attention for a decision. But I do think that those hit counts demonstrate that he's got the documents and our understanding is that Mr. Deitz was, you know, involved in the, in the investment and those search terms show that he was heavily involved.

THE COURT: Can I, just a follow-up, if you're

getting Mr. Deitz' emails from other custodians, why, I mean it seems that he, so the VR respondents claim there's a burden to reviewing Mr. Deitz' documents, and it sounds like at least some of them are coming from other custodians, so I guess at this stage why impose the burden on them to have to look for or to search his files or his emails?

MR. MAJOR: Well I think that it's, in terms of why to impose the burden on them, the question is really whether it's an undue burden. And I don't think it's an undue burden to have to search what I believe to be, you know, a total six or seven, I don't have the number in front of me, total custodians for, again, it's all about proportionality. This is a more than $10 billion fraud and, you know, is there going to be some work involved, yes, but I think the argument about burden, which hasn't been raised to us with respect to this issue before, it was a matter of principle that they were not going to give us documents from these two gentlemen. But in any event, they haven't run the hit count with the reduced search terms to see what the volume may be and they haven't come to us with any complaint about the burden or, you know, a particular issue that may help resolve it.

I think at the end of the day if they want to make a burden argument they, at a bare minimum, should have to run the search terms, run a deduplication and then we can see what the number is. But what if Mr. Deitz has a lot of documents where he's not copying the agreed upon custodians? In that case we don't have, we're going to be missing the relevant documents merely because they decided not to search somebody who was, who was clearly involved. I don't think that the VR respondents could possibly maintain that he wasn't involved given the level of hit count activity we see, given the size of this investment relevant to the overall size of the hedge fund, and given the fact that he is on emails that we've seen, and obviously from the hit counts he's on a lot of them.

THE COURT: Okay, so, Mr. Chivers, with regards to Mr. Deitz, can you, before I give you a decision on what to do with Mr. Deitz, I'd like to see what the hit count is with the reduce agreed upon search terms, and after you run some deduplication to ensure that these are just original hits.

MR. CHIVERS: May respond first, Your Honor?

THE COURT: Sure, go ahead.

MR. CHIVERS: Because there's several, there's

several misconceptions embedded in what Mr. Major is saying. First of all, we definitely raised the burden issue. Mr. Major may not have been on the call, but if Mr. Kim is still on this call I think he can confirm that I made exactly the same argument to him about the burden of reviewing Mr. Deitz' and Mr. du Toit's emails. We definitely raised burden.

With respect to whether we should be, you know, with respect to whether Mr. Deitz was directly and heavily involved, there is no evidence of that. And the only thing that Mr. Major points to is that Mr. Deitz has emails with certain search terms but directly and heavily involved in what? Directly and heavily involved in whether there was fraud in the procurement of the GSPA, whether there was fraud in the procurement of the award, or involved in the management of an overall portfolio that includes this investment? And that's the issue, they're just pointing to these search terms and saying, well, these, there are emails that hit on these search terms, therefore, Mr. Deitz must have been involved and must have unique relevant documents related to the procurement of the GSPA and the procurement of the award, and that is a leap that is based on nothing.

With respect to the document that Nigeria points to, I think that the fact that they've submitted the email really underscores that, notwithstanding all the discovery they've received, they can't point to any actual reason to believe that Mr. du Toit or Mr. Deitz would have unique relevant documents related to the underlying GSPA and the underlying award. That's an email from somebody who specifically says they're going to go to Nigerian law enforcement and we are producing emails form Mr. Nemser, the other custodian. To the extent that Mr. Deitz is on them or Mr. du Toit is on them, those will get produced, too.

We're just, we're not seeing it, there's plenty of case law with respect to what kind of showing needs to be made to get into the top executives' email account and we seem to just be skipping past that. And I have no doubt that there will be unique documents that hit on these terms because we're talking about the CFO and the hedge fund manager and they're talking about the investment at a different level. You know, they talk about the investment at the level of portfolio balancing, and portfolio management and what's in the portfolio.

Those documents have nothing to do with whether the GSPA was procured by fraud or procured, or the award was procured by fraud.

So what we're going to see if we produce a unique hit report is there's a whole lot of documents but are they relevant, there's no reason to believe they are. And Nigeria has still, I mean they've been doing discovery on these issues for three or four years, they have witnesses in Nigeria, they have emails from us, they're getting emails and other documents in the English proceeding, and they have given no reason to believe, they don't point to a single witness statement, a fact, a document that would suggest that Mr. du Toit or Mr. Deitz know about what happened in Nigeria in 2010, or what happened in the London proceeding leading into 2017 when the involvement by the VR respondents was all after that fact and they're operating at the level of the entire fund.

MR. MAJOR: Your Honor, this is Chris Major for the applicant. What Mr. Chivers is doing is he's trying to reargue your order which gave us discovery. He's saying that he's not drawing any distinction between Mr. Deitz and Mr. du Toit or the other

custodians. The Court has already ordered that discovery take place and the reason we've been at this for years is because we had to take an appeal based on the VR respondents' obstruction, and we took that appeal and came back down in this proceeding. We filed it, it was referred to a recently retired magistrate judge. We wrote to the Court periodically asking for a ruling on the application, and we just got that ruling from Your Honor after you took over the case a couple of months ago and we were directed to meet and confer.

The document production that we've been, that we've received so far from the VR respondents is paltry, I mean we have 500 or so documents so far. So the idea that we should be required to give, you know, put forth documents that would show that Mr. Deitz was involved when they steadfastly refused to give us his documents, and when they have not yet even gotten to the individuals' emails yet, we haven't received those yet. And we've just gotten them from the share drive so far from the production that's ongoing right now,

And so I think it's, I understand counsel wants to try to set up some kind of impossible burden so they can shield Mr. Deitz' documents, but at the end of the day, those search terms are inescapable, he

has documents and it's not portfolio balancing and macro issues, he has Grace Taiga in 16,000 documents -- excuse me, that's P&ID, in thousands of documents that are in his possession. And counsel just conceded that there are likely to be unique hits. That means if these custodians aren't included we're going to be deprived of documents that have these highly relevant, heavily negotiated search terms turning up in them.

So I don't think it's too much as to ask before you can, you know, prevail on a burden argument, to actually have to explain what that burden is, what are the numbers, after they've reduced the search terms and after they've run a dedupe, how many unique documents are we talking about. I bet it's not that much of a burden, but at a minimum we should know what those numbers are before they can escape having to review Mr. Deitz' emails. But it's -- I'm sorry.

THE COURT: No, no, just because we're running over and I recognize that's I'm sure my fault. So with this, I'm just talking about Mr. Deitz, so you've convinced me, I think given the fact that the 25 percent award was a significant investment, given what you had indicated was the overall value of money being managed by the hedge fund, you know, I see the

argument of why Mr. Deitz could potentially have relevant documents because he might have been involved, he might have been more than just a high level executive here because it would have been a significant investment for the fund.

I'd like to see, as I said, just to run the search terms with the -- to run the, to see the hit report with the new reduced search terms and after deduplication. Because I think if this really is a case where he was just a high level executive, then presumably we shouldn't be seeing a lot of documents at all once you've run the new search with the different search terms and after you've deduped the documents.

So, Mr. Chivers, if, I think to make the burden argument I'd like to see the hit count with the new search terms first.

MR. CHIVERS: Your Honor, they have pointed to nothing, you know. With respect to burden, we don't even get there unless they can point to some reason to believe he has documents related to the procurement of the GSPA and the procurement of the award. If we have -- yes, there will be unique documents hitting on their search terms, but that doesn't mean they're

documents related to the procurement of the GSPA or procurement of the award. I just, they haven't made any showing. I they can't point to a single case that supports this kind of discovery into the head of a hedge fund. So it's also a really bad precedent. Mr. Deitz and Mr. du Toit are both based in England within the jurisdiction of the English Court and Nigeria is coming to the US Court with no evidence of their involvement in the underlying circumstances and saying that they get into their emails. There's no precedent for this, they don't point to any in there -- they don't point to any in their papers and we think it runs directly against what this Court has previously held.

MR. MAJOR: The documents are located in this district, the VR respondents can't and will not dispute that, that's the test is where the documents are located. It doesn't matter where these two gentlemen are located at any given point in time, but the documents are located here. And we have cited plenty of (indiscernible) including in our papers to obtain the Section 1782 award. All we have to demonstrate is that the documents are for use in a foreign proceeding and that they're located in this

district. And we've already established that.

Obviously, the VR respondents are, you know, don't want to have to produce Mr. Deitz' records but, you know, to continue to say that there is some test, or threshold, or hill you have to climb before you can get the head of a hedge fund's documents is a ridiculous argument. He is involved in the transaction, the hit counts show that, and he's not treated any differently, if he is likely to have relevant documents, his email account should be searched. It's a small universe of custodians and the hit count report, you know, reveals it all.

I think that, you know, there's no reason for counsel to continue to try to argue this. I understand his client may be upset with this, but this is, you know, obvious discovery that we have been seeking for a long time and the hit counts are inescapable. I think we should just proceed with the, seeing what this burden is. They shouldn't be able to use the burden as a shield and a sword when they're not even willing to, you know, tell the Court and us what the actual numbers are.

THE COURT: Okay, so I think I've already indicated with regards to Mr. Deitz how we should

proceed. I still, though, I was treating du Toit differently, and for him I just wanted, Mr. Major, if you could just explain again what your argument is for why Mr. du Toit, and I'm sure I'm mispronouncing his last name, but for why his documents are relevant.

MR. MAJOR: Yes, Your Honor. So I should, just for the record, I'll spell his last name, it's, the first name is Emile, E-M-I-L-E, lower case D-U, for du, and Toit is T-O-I-T, and Toit the T is capitalized there, just for the record.

So he played two I think important roles in connection with the transaction and the award and so forth. Number one is he's the CFO and, again, I read earlier, I won't belabor the point, that the hit counts show that he's certainly, you know, emailing and receiving and sending emails about this in the thousands. And, again, given the importance of this award, of this investment relative to the fund, you would expect the CFO, it's not surprising here that the CFO and the CEO are spending time on this, on this matter.

The other role that he played is at the director of PHL, Process Holdings Limited, which is the claimant in the arbitration over in England

against the partner and is also the entity through which the investment was made. And, you know, again, it's not surprising but it is confirmed by the hit count report that he has lots of relevant documents in his possession.

And so, again, and the fact that he is overseas, whether he's always overseas or sometimes overseas doesn't matter, the issue is that the documents are found here. I'll have a hard time pronouncing this case, but the case is *In Re:* (indiscernible), 2006 WL 384464 at page 5 (S.D.N.Y. Dec. 29, 2006), which states that for Section 1782 discovery the issue isn't where the custodian is found but rather where the documents are found.

So I think the same arguments apply to Mr. du Toit and I think that the same search exercise should be undertaken before any burden argument could be used to deprive us of that scope.

THE COURT: Mr. Chivers?

MR. CHIVERS: Thank you, Your Honor. I really think Mr. Major's further argument just underscores how far afield we are from relevance. Mr. Major is equating a search term hit with relevance. He's done it several times in the argument and that is way

beyond what the search terms show. The English proceeding is based on whether the GSPA was procured by fraud in 2010 in Nigeria and whether the arbitration proceedings in London leading into 2017 were tainted by fraud.

Mr. Major points to search terms and says they must be heavily involved, they must have relevant documents, but there's no indication that that is true with respect to the underlying frauds that are relevant to the English proceeding. They may have documents related to the investment, itself, but how does that relate at all to the English proceeding? And Nigeria has yet to describe that and we really are very far afield from what's relevant to the English proceeding, itself.

THE COURT: Can I just ask you a question there, because you said they may have documents relating to the investment, itself, isn't it similar to the valuation issue and Nigeria's argument being that at the time they made the investment, you know, depending on what might have been said, you might be able to show it as a fact demonstrating knowledge of the fraud?

MR. CHIVERS: Well that might be from, I mean

that argument applies to before the investment was made perhaps, although we continue to maintain that unless the document related to the investment addresses the underlying GSPA or the underlying award, it still is not relevant. But Nigeria is asking us to collect documents from years of litigation and from years after the VR respondents made the investment and the investment is just on their books. And there's various ways that the CFO and the manager could discuss an investment that has nothing to do with whether the GSPA was procured by fraud or the award was procured by fraud.

THE COURT: But isn't that a separate issue of your date range problem? Like couldn't potentially your concern be remedied if I were to allow search of these two custodians, can the concern be limited by the date range?

MR. CHIVERS: It would certainly help, Your Honor, it would certainly help. We still do not see how they're connecting the CFO and the president of the fund to the underlying GSPA and the underlying award, I don't think there's anything there. I mean it's not that there's only a little bit there, I think that there's nothing there and they've gotten

discovery form numerous forums. The time period would help, of course, Your Honor.

THE COURT: The new, the reduced search terms that the parties had agreed upon that were going to be used for Mr. Deitz, I assume you don't know what the new hit count would be for Mr. du Toit with those search terms?

MR. CHIVERS: Correct, Your Honor.

THE COURT: And the search terms that you're running, what is the date range being used?

MR. CHIVERS: The searches that we've agreed to do and the collection we've already done, the review that's underway, goes from I believe January 1, 2017, until December 5, 2019.

THE COURT: And the investment, the initial investment was made when?

MR. CHIVERS: I believe the initial email that Mr. Major referred to was August, 2017, or late August or early September, 2017. And I believe the transaction, itself, occurred in late 2017 or early 2018.

THE COURT: And the enforcement proceeding for the arbitration award, that was 2019?

MR. CHIVERS: I believe some of the

enforcement proceedings began in 2018, I'd have to double check the timeline on that.

THE COURT: So I think, I'm going to treat Mr. Deitz and du Toit similarly. So we can, once you are able to run a new hit count, get a new hit count with the reduced search terms, after it's been deduped to see how many unique hits there are, I'm assuming you're making a burden argument for Mr. du Toit, as well?

MR. CHIVERS: I think primarily we're making the argument under footnote 7 in the cases there which do set forward a standard, although Mr. Major said there's no standard, I think those cases clearly do. That's the argument that we're making, it's a combination of relevance and burden. None of the, I'm not aware of anybody in those cases doing a unique search term report, I think that the Court just denied it because there was no threshold showing that there would be a reason to believe they have relevant documents.

If we reach burden then, yes, with respect to du Toit and Deitz we would argue burden, as well.

THE COURT: Okay. So I think for the reasons I indicated for Mr. Deitz, I do think Nigeria has made

that threshold relevancy argument so I'd like to see the hit counts. And while you're getting those I'll take a look at the cases at footnote 7 again but what I said before for Mr. Deitz would apply to Mr. du Toit.

Do we want to move on to the date range?

MR. MAJOR: Yes, Your Honor, thank you, this is Chris Major for the applicant. In terms of the date range, what we've produced is January 9, 2021, that's the date that we filed this application for Section 1782 discovery. And I think it's probably apparent but the reason that we picked that date is, as we do in a lot of US litigations, is you agree that after a certain proceeding is filed you don't have to, you know, do a continuous collection for a couple of reasons, one of which is, you know, if you don't have an end date it becomes unmanageable. And then, number two, you know, it's a date where, you know, the privilege logging usually gets tougher. But really here the reason that we picked the date of the filing of the application is we know that there was significant relevant events that occurred during 2020 and I think that we'd be at a real risk of missing relevant documents.

For example, a whistleblower came forward to the VR respondents and made disclosures about the fraud that had occurred. Those disclosures may well have relevant evidence that could be deployed by Nigeria in the English set aside trial. Another thing that occurred and the English judge pointed to this in his judgment of September 4, 2020, the English judge pointed out the fact that the attempts by P&ID to block the discovery we were seeking at that time in the US from third party, that we were, that that was evidence of the fraud. It was cited by the Court when he granted permission to, for the English set aside trial to go forward, and that occurred in the spring and early summer of 2020.

So those are just some of the relevant events during 2020. I think that it makes sense from that factual standpoint and then also from the practical standpoint of needing an end date and having it be the start of this proceeding. Thank you.

THE COURT: Mr. Chivers?

MR. CHIVERS: Thank you, Your Honor. The events, the events that are relevant to the English proceedings all occurred prior to January 31, 2017. The only thing that Nigeria has pointed to is an

effort by P&ID to foreclose discovery in an unrelated or in a different Section 1782 proceeding, I'm not aware of why that would be a basis for discovery beyond years after the award was rendered.

We I think really need to come back to the timeline here. We're now talking about VR respondents agreeing to do discovery for almost three years after the award was rendered during which time there was already substantial litigation related to the award. And Nigeria wants us to continue reviewing documents even from after when Nigeria filed the set aside proceeding which prompted even more litigation and more documents that contain the terms that they're pointing to, but that do not have any unique relevant information related to what happened in 2010 or before 2017.

They, I have not seen Nigeria put forward a coherent rationale for why we should be going through years of litigation documents that are years after the award was rendered when there is no reason to believe that the VR respondents would have unique relevant documents about the procurement of the GSPA or the procurement of the award. In our view, we are already years beyond what would normally be allowed in civil

litigation. The events here occurred ending in January, 31, 2017, and we're already several years after that, and Nigeria is asking us to review basically litigation documents and it's extremely burdensome to do so and they haven't connected the dots as to why the VR respondents' emails from after that time would contain unique, relevant and non-privileged documents that relate to the procurement of the GSPA or the procurement of the award.

With respect to what Nigeria is calling a whistleblower, I don't know if Your Honor has had an opportunity to read that email, but Mr. McNaughton has never had any affiliation or role with the VR respondents. He sent an unsolicited email related to events in, purported events in Nigeria that aren't even related to the GSPA and certainly aren't related to the award, and then he says I'm going to turn over all the information I have to Nigeria's law enforcement. And the email really underscores that notwithstanding all the discovery that Nigeria has done of people who have actual knowledge of what happened in Nigeria in 2010 or what happened in the English proceedings, they can't point to a single document suggesting that the VR respondents have

unique and relevant documents when the VR respondents came in solely as an investor, and this is just a portfolio investment.

So we think we've gone more than I've ever gone in a civil proceeding with respect to time period beyond the relevant events and Nigeria's request to go even further is not justified.

THE COURT: When you said there was the whistleblower email, is that attached as an exhibit to a document on ECF?

MR. CHIVERS: I believe Nigeria is referring to ECF 53-1, it was attached as exhibit A to their letter. Mr. Major can correct me if I'm wrong.

MR. MAJOR: I'm just going through my papers here to make sure that that's correct.

MR. CHIVERS: I apologize, it's 53-2.

THE COURT: Yes, I see it. And this Mr. Bernard McNaughton, and who is that person?

MR. CHIVERS: I don't know who this person is beyond what is written in the email, but the email, itself, describes events, I guess he says he was a business associate of Cahill and Quinn before the events relating to the GSPA and he was working with them in Nigeria and he says that they're bad guys. And

then Mr. Roshu Gradu (phonetic), one of the VR respondents, responds by saying basically why are you emailing this to me, we had no involvement with ICIL. ICIL is the company that was, I think was, Mr. Quinn had involvement in long before the GSPA, and Mr. McNaughton responds by saying, you know, I'm going to turn over all the information I have to Nigeria's law enforcement which we think just underscores how far afield this discovery has gotten. This is somebody that says they're going to Nigeria to give them evidence about things that didn't even relate to the GSPA or the award and Nigeria is somehow pointing to that as a reason to expand the time period into years after the award.

THE COURT: Mr. Major, are the only two things that Nigeria is pointing to for why it should get the date range to go through the December 5, 2019, is the whistleblower and the attempts by P&ID to block discovery?

MR. MAJOR: No, Your Honor, I was just giving those as examples of things that happened in 2020 that would be completely omitted if we limited the date range. But there's lots of other documents that may well be available and that were, for example, emailed

in 2020. Even if they were historical documents attached to an email, if they were emailed to or within the VR respondents during 2020 those documents will be completely missed in the search that the VR respondents are proposing to do.

Just on Mr. McNaughton, he had originally come forward and agreed to provide information, our clients information, and one of the things that they're looking into, he received some payments from a source that I believe is still being traced, but he had received some payments and then no longer came forward. And so one of the things our client is looking into for the English trial is whether he was paid any hush money, so to speak.

And, you know, the fact that counsel for the VR respondents keeps saying that it shouldn't matter what happened after the, his client came in and purchased and interest in the award, first of all, this is an argument that was raised and rejected by the Court when the Court ordered the Section 1782 discovery, this is something the VR respondents have been arguing for a very long time.

The obviously acknowledge that as part of the order they have to produce documents. There may well

be, you know, new issues that occurred during 2020, but even if not, and I've already identified a couple for the Court, but, you know, the other thing about 2020, as I said, they could be emailing documents that attach, sending emails or receiving emails that attach documents that are relevant to the English trial and that's why they're getting picked up in the hit count. I recognize that there probably are privilege documents during that period but those documents can be addressed, you know, by counsel pulling them out and not producing them, obviously. And if there are burden issues associated with that, then, you know, that's something that we've already explained to them that we're willing to do some reasonable things to make sure that, you know, they're not spending too much time just looking at privilege documents.

But there are going to be documents that get missed related to Mr. McNaughton, related to things that were done during 2020 to try to block discovery by P&ID, including the third party financial firm discovery we were taking here in New York. And so I think that the time period picking the beginning of 2021 when this proceeding was filed is a logical place to cut it off. Obviously, there is, you know, there

has to be a place that we pick but I think that at least bringing it out to that period, I mean in terms of the litigation that was going on, Nigeria didn't even have permission to pursue the set aside trial until September 4th of 2020. So certainly trying to cut it off when they filed an application for permission a year earlier I think is going to definitely cause us to miss documents.

I mean this McNaughton issue is not an unserious issue. If you look at the top of that exhibit it goes to Mr. Deitz. So it's obviously an important issue for the VR respondents and they may have documents in their possession that they didn't create from 2020 that I think should be reviewed and to the extent not privileged produced.

THE COURT: Can I ask if either party -- what was the date range that was agreed upon before Judge Engelmayer in that proceeding?

MR. MAJOR: From the respondents' point of view, what's happened in that proceeding so far is the VR respondents, and Mr. Kim who is on the line can probably be more precise here but just conceptually, what the VR respondents did was they did a varied search were some of the search terms I believe went

for a longer period. And but that was selected by them, we did not reach an agreement of what to do in that proceeding, and they did, you know, the VR respondents did that unilateral search where they kind of designed it and proposed it and that was when Judge Engelmayer said, well since you've already, you know, done that collection, do the review and production and then also he ordered them to run the search terms that we had proposed at the time. And so I don't know, Mr. Kim, if you could give the, more precision on what those actual dates were?

MR. KIM: Sure, Your Honor, this is Austin Kim for the respondents. And so the date range that had been selected and this, again, was a date range selected by the VR respondents that they decided to run, was for, there were two sets of date ranges. One was for the individual custodians and that date range was January 1, 2006, to October 30, 2021, and then for the network drive, which is sort of the shared drive that we've been discussing on this call, for that date range it was January 1, 2017, through the same, October 30, 2021.

THE COURT: So in Engelmayer's proceeding you're getting more, you're getting through October of

2021. Here the cutoff is December 5th of 2019, right?

MR. KIM: That's the proposed timeline that the VR respondents have now rolled it back to, that's correct, Your Honor.

MR. CHIVERS: Your Honor --

THE COURT: Sure, oh, sorry, is this Mr. Chivers?

MR. CHIVERS: Yes, Your Honor.

THE COURT: Go ahead.

MR. CHIVERS: For the VR respondents there hasn't been a rollback, the proceedings before Judge Engelmayer and then Judge Schofield have fairly nuanced procedural history and the, first of all, with respect to the search terms that were run in that case, the VR respondents applied the search terms that Nigeria and P&ID reached in the English proceedings that would apply to documents then received after July 1, 2017. The VR respondents continued to claim that we selected those unilaterally but we didn't just make up those search terms, those were terms that were agreed upon in the English proceedings. And with respect to the time period, what really happened there is that Judge Engelmayer wanted the parties to do discovery because that case had been pending for so

long and their impasse had been for so long, and I think the VR respondents basically threw up their hands and said, okay, here, we'll do this discovery based on the English proceeding search terms and they ran it through a very overbroad time period through October, 2021.

One of the insights from that is that running the search terms through that period is what brings up just enormous volume of litigation documents, at that point there's four or five litigations going on and no reason to believe and that review and production is done and I don't believe that the, that Nigeria has pointed to any documents from that review and production which was more than 100,000 documents reviewed, that would lead anybody to believe that we should continue reviewing documents form years after the award. I think, if anything, expanding the time period in that case just underscores that this is an enormous net that they're trying to cast that has no relation to the underlying timeline.

The agreement is memorialized on the docket, it's at 20mc209 at ECF number 48-2 where there's an email from the VR respondents' prior counsel explaining why they used those search terms in the VR,

in that proceeding, which is that were reached in the English proceeding.

THE COURT: But I guess I might be missing something. If the VR respondents agreed to produce or to search for documents through October of 2021 in the related Engelmayer, the proceeding before Judge Engelmayer, I'm struggling to see why in this proceeding raising, you know, all based off of similar underlying facts, the cutoff is now December of 2019?

MR. CHIVERS: Well, Your Honor, the experience from reviewing documents form later is that there aren't any unique and relevant documents. We've reviewed them and produced from them and the burden has been enormous. I certainly don't think that the agreement that was reached in the Schofield proceeding should be some kind of precedent that was reached as a matter of compromise because the VR respondents were trying to just over produce and over review as a way to, you know, just get through that proceeding. And we'll go before Judge Schofield at some point to discuss what, if any, additional discovery should be done there, but certainly I don't see how that could be a precedent for this action.

This action is also narrower, significantly

narrower. This action relates to the English proceedings whereas in the Schofield proceeding, Nigeria is seeking documents related to a broader universe of events. I mean in the Schofield proceeding Nigeria was seeking documents and may still be seeking documents related to the enforcement of the award which the only reason I can think of that the time period would go beyond, would go beyond something like 2018 or 2019. Whereas in this case, the English proceedings are the anchor against which we need to evaluate relevance and proportionality and the events that are relevant to the English proceeding occurred in 2010, 2011, through 2017.

THE COURT: But isn't this the same date range you're using in the Engelmayer proceeding which concerns the pending Nigerian criminal proceeding?

MR. CHIVERS: We, so in the Schofield proceeding, the current status is that the VR respondents agreed to perform certain discovery, they performed that discovery and they completed that discovery, and the position they're taking in the Schofield proceeding is that no further discovery should be done. And I think, Your Honor, the position by Nigeria for the entirety of these litigations is

that these cases need to be viewed distinctly. I think that was their primary opposition to the VR respondents' arguments related to res judicata or claim preclusion or seeking to get the cases consolidated. Nigeria has time and again said these cases need to be evaluated and analyzed separately and now I hear them to be sort of saying like, well, because the VR respondents made an agreement in the other case based on reasons that are unique to that other case, that should be some kind of precedent here. I don't think that's appropriate, especially given the arguments Nigeria has made about keeping these things separate.

MR. KIM: Your Honor, this is Austin Kim again, I just have a couple of clarifying points, you know, because the few times that Mr. Chivers mentioned negotiate or compromise or some sort of precedent and that's just false, Your Honor. There was no negotiation or compromise, this was an edict from VR respondents that this is what we're going to do, if you don't like it then go complain to the judge, and that's exactly what happened.

The October 31, 2021, date was selected by the VR respondents without asking Nigeria a single

question and they told us that that was based on the English proceedings. So the October, 2021, date that was used, the VR respondents represented to us that that was based on what was considered relevant in the English proceedings. Now we're hearing that the October, 2021, date has no connection to the English proceedings.

Also, with regards to the 100,000 document number that's being thrown around, the actual production from the Engelmayer proceeding or Judge Schofield proceeding is about 1,200. And so after -- after figuring out which date range they wanted to us and then picking 33, I believe it was 33 or 34 search terms out of the 150 that were agreed to in the English proceeding, so they cut out about 75 percent of the search terms, picked 33 of the ones they liked with their search terms, their date range and then produced 1,200 documents. So it's no surprise that a smoking gun didn't appear.

So I just wanted to clarify those points as to how we got to where we got in the Judge Schofield proceeding.

THE COURT: So I might be missing something and someone should speak up if I am, but this is where

I'm not following. In the related proceeding before Judge Engelmayer, what I've heard Nigeria say is that the VR respondents agreed to produce documents through October of 2021 because presumably they thought, or at least agreed that there were relevant documents to the English proceeding up to that date. And what Nigeria wants here is a cutoff earlier than that, right, January of 2021, several months earlier. And now -- I'm sorry, now I hear -- sorry, Mr. Kim?

MR. MAJOR: No, sorry, this is Chris Major, Your Honor, I apologize. The earlier time period that we're proposing is a compromise. In other words --

THE COURT: Yes, I totally get that one. So I guess my confusion -- no, I don't mean to cut you off, but just to make clear what my confusion is, is I don't understand how in one proceeding that everyone agrees is related where the VR respondents have said that there's documents through October of 2021 that are relevant to the English proceeding, the English proceeding being key in our current proceeding here, how now it can be the case that we're saying, no, the documents end at December of 2019.

MR. CHIVERS: Your Honor, this is Jeff Chivers for the VR respondents, the VR respondents have not

made that concession. I would ask that counsel for the other side point to that concession about relevance. I am not aware of any such concession by the VR respondents. That is the --

THE COURT: You agreed to produce the documents, isn't it, even if you didn't, even if you didn't expressly make the concession you implicitly made the concession when you agreed to the production through that date.

MR. CHIVERS: No, I don't -- no, Your Honor, and the Engelmayer transcript is crucial on this. The VR respondents expressly reserved their rights to argue relevance and burden after that hearing before Judge Engelmayer. And what they agreed to do there was not, I mean it was explicitly said that it was not a concession. For Nigeria to now say that was a concession that should be used as some sort of precedent for this proceeding I believe goes directly against what was presented to Judge Engelmayer.

Mr. Kim also accused me also I think of making a false statement which I believe is a bit out of line. It is, it is not true that the VR respondents just unilaterally chose search terms or cut off 75 percent of search terms. The search terms that were

agreed upon in the English proceeding had date ranges. There was a segment of the search terms that applied to one date range and a segment of the search terms that applied to a different date range. The VR respondents -- the VR respondents applied the search terms that applied to the date range for which the VR respondents were involved in making the investment. This was not some kind of decision, I mean I think Mr. Kim's statements had several accusations embedded in them as if we are, you know, reviewing documents and then gaming things to try to avoid the production of things. There is absolutely no evidence of that, I think it's getting very close to a line with respect to being improper with respect to how they say we're handling this. There's no evidence that we've been handling this in a way that is anything other than above board.

MR. KIM: I apologize, I didn't mean to be adversarial on this. But, for example, in the related proceeding the term P&ID was excluded, Process and Industrial was excluded, GSPA was excluded, gas supply and processing agreement was also excluded. So I mean it may have been, you know, some sort of formula they came up with but it seems, it seems difficult to

square how the term P&ID was properly excluded from a search in aid of investigations concerning P&ID's fraud. But that's all I have to say on that.

MR. MAJOR: Again, Your Honor, the search terms were based upon the search terms for the time period as agreed in the English proceedings, this was not a selective exclusion or anything like that. And in this proceeding, with respect to the five custodians we've agreed to produce for the time period that we've agreed to produce, we've used all of the search terms that Nigeria asked for.

THE COURT: Okay. So let me, just to recap before, I owe you a decision on the first issue that we first started discussing, the financial documents of valuation. I will owe you a decision on the second category once I get the documents for in camera review. I'm, we're going to wait to hear back from Mr. Chivers on the du Toit and Deitz search count, the hit report with the reduced search terms. I'm going to just, since I owe you a decision on the first, I will give you the date range decision along with the first category.

I think the only remaining issue is the depositions, unless I'm missing something?

MR. MAJOR: That's correct, Your Honor.

MR. CHIVERS: Jeff Chivers for the respondents. I believe Your Honor ruled from the bench that the scope of disclosure does not extend to the lobbying or public media documents.

THE COURT: Yes. Yes, I didn't mean to leave that one out, that's correct. So the decision, what you're going to hear from me on is the first category, the second category and the date range. We're tabling the custodian issue until we see the hit count and now we're left with the deposition issue.

MR. KIM: That's correct, Your Honor, deposition are the last remaining issue for today.

THE COURT: Okay, and what's the deposition issue?

MR. KIM: Well the deposition is that we'd like to take the deposition of the two individual custodians -- the individual respondents, Ashok Raju and Jeffrey Johnson and also the corporate representative deposition for the VR respondents. And we've previewed this issue with Mr. Chivers before and, you know, and I think it was alluded to in his response letter, is what we would like is for the Court to order the depositions to occur within the

time frame of the existing disclosure which would be by November 30th of this year.

THE COURT: So --

MR. KIM: And with regard to the scope of the depositions, and this is something I've also discussed with Mr. Chivers, is that the parties, Nigeria and VR respondents have entered into extensive negotiations with regard to the criteria, production and the topics that are relevant. And with the exception of the first two issues that are still under consideration by Your Honor, which would be the investment criteria and the second category that Your Honor reserved decision on, the rest of the topics have also been agreed to as relevant within the scope. So we're just looking for Your Honor to provide some clarity on when the depositions will occur.

THE COURT: Well let me just ask you, we're still also waiting for the hit counts on the two additional custodians, and I guess depending on that I'm just trying to get a sense of whether it's feasible to have everything done by November 30th. Mr. Chivers?

MR. CHIVERS: Thanks, Your Honor. With respect to the scope of the deposition, our request is

that Nigeria serve a document that lays out the topics that it wants to depose on. I think it's true, we've had meet and confer sessions, but we don't have that document and that document is really important to going to the client and being the source of truth with what the depositions are about. And we've said we will, we will respond to that once we get that document.

So with respect to time period, this is, there's a lot of work on our plates already. I think coming out of this hearing there's additional work beyond what was already on our plate, and I don't think it's realistic to have all the document discovery and all the depositions done by November 30th. I think if the current scope of discovery were all that we were doing with respect to document discovery, we may be able to, you know, pull weekends and nights to get even the depositions done by November 30th, but Nigeria is asking for more document discovery on the one hand and then asking for an expedited deposition schedule on the other hand. I think it would be extremely difficult, I don't think it's feasible to expect us to do all of this document discovery and then also prepare for depositions by

November 30th. It could be soon after that, you know, a couple of weeks after that, I understand they have a deadline, but November 30th is a really tough date.

THE COURT: Mr. Kim, has Nigeria not served the list of deposition topics?

MR. KIM: Well what I've discussed with Mr. Chivers is that a list of deposition topics -- the list of deposition topics is going to mirror the list and criteria of production that we've already discussed and negotiated over the past several weeks. So I mean I think it's no surprise and Mr. Chivers has already identified for us who the likely corporate representative is going to be. We're in agreement on the topics, it's not, there's no mystery and we're not hiding the ball here, but the formal document has not been sent to them, that's correct, Your Honor. But the topics is not, I don't believe the topics or the mystery around topics should be a reason for a delay.

The only outstanding potential issues with the topics would be pending Your Honor's decision on the outstanding issues of scope.

THE COURT: Right. Okay, so -- what is this, November 1st. So I think it would make sense to have Nigeria formally serve deposition topics just so that

there's no ambiguity or uncertainty as to, I understand the parties have negotiated whatever the scope of discovery was but, you know, just to make sure we're proceeding in order I would have Nigeria serve the deposition topics. Because we're talking about potentially expanding the scope of the responsive documents either through potentially a ruling on the first or second category or the custodian issue, I'm not inclined to say November 30th is the deadline for having the deposition taken. I'm, instead of me setting an arbitrary deadline, now that I've said that, you know, I'm not going to force VR respondents to get it all done by November 30th, if the parties want to meet and confer and figure out a reasonably good date that works for both sides, I think that would probably be better for you than me just arbitrarily picking a date. But if the parties can't agree, I can certainly pick a date.

MR. KIM: Your Honor, just to, I think that, you know, Mr. Chivers is joining the party a little bit on the late side but, you know, this proceeding was filed, what, January of 2021, and when we filed the proceeding we served subpoenas, deposition subpoenas on the VR respondents that did include all

of our document requests. So the scope has now since then been narrowed significantly to where we are today and so, you know, at a minimum we would ask that, at a minimum that VR respondents would agree to the two individual respondents being deposed, as well as the corporate representative, and then we can meet and confer as to the number of corporate representatives, whether it's one for all of them, or each one wants to appoint their own, that's something that we can discuss. But then we can then, as Your Honor instructed, confer as to reasonable time by which the depositions would be completed by, from our perspective because we have a January trial date, we don't really have much wiggle room to be able to obtain deposition testimony in time to be used in the English trial.

THE COURT: So here's the problem with pushing the January 1st trial deadline. When I inherited Judge Freeman's docket, I knew this had been outstanding for a while, and I think sometime in May I had issued an order for an oral argument on this and when I tried to like get this case resolved sooner, the parties I think twice asked for an adjournment of a decision because they wanted to proceed before Judge

Engelmayer. And then eventually when that didn't work out everyone came back. But I guess, you know, if urgency was such an issue, I, you know, I struggle to understand why when in May I was ready to rule on this and have an oral argument the parties were like let's adjourn and see what happens before Judge Engelmayer.

So I understand that Nigeria has a deadline of January for the trial, but, you know, given the scope of the production and the additional discovery that Nigeria wants, I'm just not, I'm not going to force the depositions to also occur by November 30th and force VR respondents to operate on that schedule given that, you know, I understand before I came on that it was, you know, Judge Freeman didn't give you a decision soon enough on the case language, but when I did inherit her case I did try to get this moving and no one wanted to move quickly at that point.

MR. KIM: Understood, Your Honor, that's fair and we don't want to impose any burden on the Court. The decision at the time that was made was, I mean frankly speaking, Nigeria was acting in good faith and we had expected that the collection would proceed in a prompt manner, but it took, it took the VR respondents four months to produce 1,200 documents. And so, and

after that four month period had pretty much come to an end, we realized that, you know, that they were just buying time, and so that's when we declined the VR respondents' third request for an adjournment. Because the requests were VR respondents' requests and we complied because they were in the middle of production and then it turns out that their grand production of 1,2000 took them 4 months and at that point that's when we acted.

But I totally appreciate that Your Honor, you know, is not the one who asked for the adjournments and so we'll comply with whatever Your Honor says.

THE COURT: Okay, so just to make sure we have a timeline that works here, Mr. Kim, you had indicated you wanted VR respondents to identify the people who would be deposed, I'm not sure if I'm summarizing that accurately, but if I'm not you should let me know. But I don't think I saw in your letter exactly who the two individuals you wanted were?

MR. KIM: Oh, it's just the individual respondents, that would be Ashok Raju and Jeffrey Johnson and those are the two individual respondents that are part of this proceeding, and then a corporate representative. And then I'm sure that Mr. Chivers and

I with Mr. Major can consult with our clients and decide whether we want one corporate representative or four. That's something that we can determine. But it's just the idea of ordering that the respondents be deposed and then after this call Mr. Chivers and I can offline discuss the reasonable time by which the deposition will be done, I just don't have a time off the top of my head that I can throw out there for consideration.

THE COURT: Okay, no, that's fine. Mr. Chivers, what is the problem with having the individual respondents deposed?

MR. CHIVERS: Well, Your Honor, the last time that depositions was discussed between counsel, I don't believe we talked about the individual respondents, I think they would say, well, we served the subpoenas so you should have known that and, nonetheless, we didn't discuss it. I think with respect to the corporate representative we're waiting for the notice with respect to the list of topics.

With respect to the two individuals, I think we may have a dispute there because we've included them as custodians because they were named in the subpoenas and we are reviewing and we're going to

produce non-privileged relevant documents. But I don't think Nigeria has given an actual reason that these two individuals would have anything, I didn't expect this to come up on the hearing today, but I'm not aware of a reason that Nigeria actually wants to depose these two people. And I think we'd at least like to hear that before agreeing to have the former and current chief operating officers sit down and I think we'd want to discuss with Nigeria's counsel what the time limitations would be for that, whether they'd be in person or remote. It's a substantial burden to have executives sit down for a deposition like this and we're not seeing any reason that these two should have to sit down based upon what Nigeria has put forward.

With respect to the corporate representative, yes, we will make a corporate representative, one or more corporate representatives available for the deposition as soon as we get the list of topics. And we're not trying to drag our feet on that at all.

THE COURT: Okay, so then since, so it sounds like VR respondents are agreeing to the corporate representatives, the parties are going to have to meet and confer anyway on the timing issue, and Nigeria is

going to formally serve the list of deposition topics. Mr. Kim, I think it might make sense given what Mr. Chivers said for the parties to just meet and confer entirely and discuss the deposition of the individual respondents and explaining why the depositions are necessary.

MR. KIM: That's fine, Your Honor, we will do that. As soon as this call is over I will connect with Mr. Chivers and we can set up a meet and confer. Judge, just briefly, Mr. Raju is the primary contact person at VR respondents. For example, the whistleblower sent a general email to VR respondents' mailbox and that automatically was sent to Ashok Raju who is one of the individual respondents. So he is the face, for all intents and purposes, of all communications that are sent to VR respondents.

With respect to Jeffrey Johnson, he's a director, he's not only an executive of VR respondents, his exact title escapes me right now, but he's also a director of PHL. And so he is definitely somebody who is not tangentially involved, he is directly involved in the investment with VR respondents' investment in P&ID from the very beginning. So he would be also somebody who would have

relevant information that Nigeria is seeking for the English proceedings. But these are topics I'll discuss with Mr. Chivers offline and then we can send a joint letter to Your Honor, today is Tuesday, if Your Honor would be amenable to it we can send something in by Thursday just so your Court has the, Your Honor has the information while you're considering the other outstanding issues.

THE COURT: Yes, so what I'll say is I'm happy to rule on these things quickly, so to the extent you meet and confer and the dates of the depositions and the individual respondents is still an issue, if you send me a letter I won't sit on it for long, I'll try to give you a decision really quickly. So I think that might make the most sense given that it sounds like for Mr. Chivers he wasn't really prepared to address this issue. And I don't mean to suggest, Mr. Chivers, that it was through any fault of your own, but I'd like to have the parties just meet and confer first before having me decide it.

MR. CHIVERS: Thank you, Your Honor.

MR. KIM: Go ahead, I'm sorry.

MR. CHIVERS: I think attempting to resolve this before Thursday between the parties is overly

ambitious, there's several things I have to do immediately coming out of this conference and I think we could submit a joint letter on this, if one is even needed, because, again, I think this issue hasn't been sufficiently developed and we may be able to reach agreement on this and if a joint letter is needed I think we could submit it early next week and it would still be timely with respect to the overall timeline.

THE COURT: If you can, if you can submit it by the time you're submitting the second category, the November 7th review, we could take care of it all together.

MR. CHIVERS: Understood, Your Honor, we can do that.

THE COURT: Okay, I think that might address every issue that was raised in the letters, if there is anything I missed, folks should let me know now? Okay --

MR. KIM: For Nigeria, I think we've covered all the grounds, Your Honor. Thank you for the time.

THE COURT: Great, and then Mr. Chivers?

MR. CHIVERS: I think that's everything, Your Honor, thank you.

THE COURT: Okay, so I've already summarized

what you need form me and I'll get that out quickly, and I really appreciate everyone taking all this time to discuss these issues. And to the extent possible, if one of the parties can order the transcript that would be very helpful.

MR. MAJOR: Will do, thank you very much for all the time, Your Honor, really appreciate it.

MR. CHIVERS: Thank you, Your Honor.

(Whereupon, the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of The Federal Republic of Nigeria versus VR Advisory Services, LTD, et al., Docket #21mc00007, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: November 7, 2022